CLERK'S COPY.

TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

October Term, 1947

No. 392

Tighe J. Woods, Housing Expediter,

Petitioner,

vs.

CHARLES STONE

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT

PETITION FOR CERTIORARI FILED ...

CERTIORARI GRANTED ...

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1947

No. 932

FRANK R. CREEDON, HOUSING EXPEDITER, OFFICE OF THE HOUSING EXPEDITER, PETITIONER

vs.

CHARLES STONE

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

INDEX

1 In the United States District Court, Northern District of Ohio, Western Division

CHESTER BOWLES, ADMINISTRATOR, OFFICE OF PRICE ADMINISTRATION

vs.

CHARLES STONE

Complaint

Filed Feb. 1, 1946

2 1. Plaintiff, as Administrator of the Office of Price Administration, brings this action on behalf of the United States of America under Sections 2, 4, 205 (c) and 205 (e) of the Emergency Price Control Act of 1942 as amended (50 U. S. C., Sections 902, 904, 925 (c) and 925 (e)), as hereinafter more fully appears.

2. At all times material hereto, there has been, and now is, in full force and effect the Rent Regulation for Housing (8 F. R. 14663) as amended, hereinafter referred to as the "Regulation," which prescribes maximum rents for the use or occupancy of housing accomodations in the Columbus-Indiana Defense-Rental Area.

3. During all times mentioned herein defendant was the landlord of housing accommodations situated at 148 West Washington Street, Mooresville, Indiana, within said Defense-Rental Area.

4. On or about the first day of August 1944, defendant rented said housing accomodations for the first time since said Rent Regulation became effective on September 1, 1942, in said Defense-Rental Area.

5. Defendant failed to file a registration statement with the Price Administration within thirty days from the first rental as required by Sections 4 (e) and 7 of said Regulation.

6. On or about the first day of August, September, October, November, and December, 1944, and January, February, March, and April, 1945, defendant demanded and received from C. F. A. Locke, tenant in said housing accommodations, the sum of $75.00 per month as rent for the use or occupancy thereof.

7. On or about the 29th day of June 1945, the Rent Director for said Defense-Rental Area, pursuant to Sections 5 (c) (1), 5 (d) and 4 (e) of said Regulation, issued an order effective as of the date of the first renting of said housing accommodations, or from the beginning of the first rental period, on or after October 1, 1943, or the effective date of the Regulation, which ever

3 is later, decreasing the maximum rent on said housing accommodations from $75.00 per month to $45.00 per month.

8. A copy of said order decreasing the maximum rent was mailed to defendant on or about the 29th day of June 1945.

9. Defendant has at all times failed or refused to refund to the said tenant the sum of $270 collected from said tenant in excess of the legal maximum rent prescribed by said order of the said Rent Director.

10. More than thirty days have elapsed since the occurrence of the violations and the tenant has failed to institute an action under Section 205 (e) of the Act.

11. Three times the amount by which the rent demanded and received by defendant from said tenant exceeded the legal maximum rent prescribed by said order of the Rent Director and which sum defendant failed or refused to refund to said tenant equals $810.00.

Wherefore, plaintiff prays judgment on behalf of the United States of America against defendant in the sum of $810.00 and the costs of this action.

Dated: February 1, 1946.

Of Counsel for Plaintiff:

(S) WALTER J. HEDDESHEIMER,
District Enforcement Attorney,
(S) PAUL MARSHALL,
Attorney in Charge of Case,
Address: Office of Price Administration, Cleveland District Office, 226 Union Commerce Building, Cleveland 14, Ohio, Telephone: CHerry 7900.

(S) WILLIAM K. ROSE,
Litigation Attorney,
Address: 307 Superior Street, Toledo Ohio; Telephone: Garfield 8393.

4 In United States District Court

Appearance

Filed February 20, 1946

To the Clerk:

Please enter my appearance as Defendant in the above entitled cause.

(S) CHARLES STONE,
Defendant, In Pro Per,
2506 Scottwood Street, Toledo, Ohio.

In United States District Court

Answer to complaint

Filed February 20, 1946

Now comes Charles Stone, in pro per, Defendant in the above entitled Cause, and for answer to the Complaint filed therein, says;

1, 2, 3. Answering the allegations contained in said paragraphs, the Defendant admits the same.

4 and 5. The Defendant admits the allegations contained therein; however, the monthly payment received by the Defendant from C. F. A. Locke was the rent for premises at 2506 Scottwood Avenue, Toledo, Ohio—premises occupied by the Defendant herein, under an agreement whereby Mr. Locke was to pay whatever rent was necessary for a residence for the Defendant in the City of Toledo, Ohio, in exchange for immediate occupancy of the Charles Stone home at Mooresville, Indiana; and further, this explains the reason why it was unnecessary for this Defendant to register the Mooresville property, because the remuneration was paid for the Scottwood Avenue residence.

6. The Defendant denies the allegations contained in said paragraph.

7. The Defendant denies that he was the owner of the
5 Mooresville property on June 29, 1945, and further states that any order issued by the O. P. A. for rent as of that date could have no reference to this Defendant; and that Docket No. 20-691 refers to Wm. H. Henley and not to this Defendant.

8. The Defendant admits receipt of the order, and further avers that following June 29, 1945, the Defendant negotiated with the tenant for settlement of damages claimed by Defendant for malicious destruction of the Mooresville property; failing on arriving at a settlement, the Defendant instituted suit against the said Locke in Martinsville, Morgan County, State of Indiana, being case No. 23695, said proceedings having been instituted August 25, 1945, and is presently pending in said Court and awaiting trial; and that in said suit the defendant in that suit, Locke, is claiming overcharges due allegedly; and that in said suit the Defendant herein as plaintiff is claiming damages in the sum of Fifteen Hundred ($1,500.00) Dollars—an amount greatly in excess of the within action.

9. The Defendant denies the allegations contained therein; further answering, the Defendant prays for reference to the answer made in paragraph No. 8.

10. The Defendant denies the allegations contained therein; further elucidating, the Defendant states the truth to be that ac-

tion is now pending between this Defendant and C. F. A. Locke as is explained in paragraph No. 8; and further, the Defendant alleges that as regards any claims for August, September, October, November, December, 1944, and January and February, 1945,—those dates are more than one (1) year previous to the filing of the within Cause on February 1, 1946—and therefore under Sec. 205–E of the Emergency Price Control Act of 1942, as amended, by the Stabilization Act of 1944, action for those months is barred, and no valid claim can be made for such;

11. The Defendant denies that the Plaintiff is entitled to recover in this action, for the reason that settlement or trial
6 is about to be reached in the pending action in Morgan County Court, as is more particularly set forth in paragraph No. 8.

Wherefore, this Defendant prays that the within cause of action be dismissed with costs to the Defendant.

(S) CHARLES STONE,
Defendant, in pro per.

Dated: Toledo, Ohio, February 18, 1946.

In United States District Court

Transcript of testimony

Filed January 9, 1947

Transcript of testimony and proceedings in the above entitled cause before Hon. Frank M. Kloeb, District Judge, on June 25, 1946.

Appearances

W. K. Rose, Esq., for the Plaintiff.
Etheleen M. Stevens, for the Defendant.

Plaintiff's offers in evidence

The Plaintiff, to maintain the issues on his part to be maintained, offered the following evidence:

Mr. ROSE. If the Court please, I have the original registration and the original order decreasing rent and would like to leave at this time to substitute for them and offer the substitutes as Exhibits 1 and 2 of the Plaintiff. Do you have any objection to it?

Miss STEVENS. No.

Mr. ROSE. It is understood the defendant has no objection to the introducing of these exhibits in evidence?

Miss STEVENS. That is right.

The COURT. Has the Clerk identified them?

7 The CLERK. No, Your Honor. They have not been submitted to me for marking.

(Papers referred to marked "Exhibit 1" and "Exhibit 2".)

The COURT. Let me see them.

(Exhibits 1 and 2 handed to Court by the Clerk.)

The COURT. Very well; they may be admitted.

Mr. ROSE. May it also be stipulated, Miss Stevens, that commencing August 1, 1944, and for the following eight months or a total of nine months, ending April 1945, the defendant, Charles W. Stone, received checks each month in the amount of $75.00 from Mr. C. F. A. Locke?

Miss STEVENS. They may be offered for what they are worth.

Mr. ROSE. Plaintiff offers Exhibit 3, which consists of checks bearing the signature and endorsement of Mr. Stone, in evidence.

The COURT. They will be admitted.

Mr. ROSE. With that, Your Honor, the plaintiff rests.

Thereupon the Defendant, to maintain the issues on his part to be maintained, offered the following evidence:

Defendant's opening statement

Miss STEVENS. Your Honor, it is our contention—I would like to review, with Your Honor's consent—that this was an exchange of property; that in January 1945, a copy of the contract between these parties, Mr. Locke and Mr. Stone, was mailed to the Area Rent Control Office. A reply came from that office, by way of a booklet, telling how to evict tenants; nothing in there regarding registration, and nothing was done until June 11th, when a letter came from the Area Office asking him to register. He made a reply to that letter that there was no rental agreement—we have the signed letter from Mr. Locke, stating that there was an exchange of property. We have other evidence which we would like to offer at this time.

The COURT. Very well.

Mr. ROSE. So as to make our position clear and not interrupt the examination, it is our contention that this so-called

8 exchange and so-called agreement was void; that they are expressly prohibited by the regulations; that they have no bearing in this case, and as far as the response of the Area Rent Office is concerned, I have the correspondence so I will go into that. I will state that now, because I do not want to interrupt the examination, but we are objecting to anything in the nature of the agreement between the parties.

Miss STEVENS. There is a case pending in the Morgan County court between landlord and tenant for destruction of property, and the defendant has continually claimed a set-off because of

these overcharges, and the amount of the claim for damages far exceeds the amount of any overcharges. Further, we are claiming under Section 205–e of the Act, action by either the tenant or the landlord was prepared as of February 1st. All rent receipts prior to that are more than one year old, and under Section 205–e no action could arise on those receipts.

Thereupon the Defendant,

CHARLES W. STONE, having been first duly sworn, testified in his own behalf as follows:

Direct examination by Miss STEVENS:

Miss STEVENS: I would like to offer in evidence, Your Honor, the original contract and the letter that accompanied that, a copy of which was mailed to the Area Rent Office.

The COURT. What week was that mailed?

Miss STEVENS. January 16, 1945. Here is the receipt for the registered letter.

(Defendant's Exhibits A and B handed to the Court; also Exhibit C.)

I would like to offer this reply of the Area Rent Office; no actual reply, just printed material was sent in reply.

I would like to offer in evidence, also, a letter of the other party to this contract, Mr. Locke, under date of January 23, 1945.

Q. What is your name?

9 A. Charles W. Stone.

Q. Where do you reside, Mr. Stone?

A. At the present time, 6123 Ralston Avenue, Indianapolis, Indiana.

Q. Did you ever rent the property concerned in this lawsuit at any time, Mr. Stone?

A. I never did.

Q. Did you at all times live in the property while you were owner of the property?

A. Until August 1, 1944.

Q. What occurred on August 1, 1944?

A. I entered into an agreement with Mr. Locke to trade properties from my position at Toledo, Ohio, to his position at Mooresville, Indiana.

Q. What led up to that contract?

A. My house was up for sale at Mooresville. He proposed to rent the house, but I wouldn't rent. So I traded my house in Mooresville to him for his house in Toledo.

Q. Did you make a contract to that effect?

A. Yes.

Q. Is this the contract, that has just been offered in evidence?

A. Yes, Exhibit A.

The COURT. What is the date of that contract?

Miss STEVENS: 7-28-1944.

Q. Did you ever mail a copy of that contract to the Area Rent Office?

A. Yes; July 16, 1945.

Q. Is that a copy of the letter that you mailed to them at that time?

A. Yes.

Q. That is Exhibit B. What reply, if any, did you receive after the mailing of that letter?

A. Some pamphlet on rent control—printed matter.

Miss STEVENS That is Exhibit D.

Q. Is that what you received in return for your contract?

A. I found nothing in this that prohibited the trading of properties.

Mr. ROSE. I move to strike that as not answering the question.

The COURT. Sustained.

Q. I will ask the question over. Is this what you received in return, in reply to your letter and the contract?

A. Yes, it is.

Q. What did you find in that?

A. Rent regulations for houses, and questions and answers on rent control.

Q. Did it tell you that you should register this property?

A. If it was rented; yes.

Q. Did you register it?

A. No; I did not.

Q. Why?

A. I found nothing in the order that mentioned trading of properties.

Q. What is the next communication that you received regarding the property?

A. The next communication I think is June 1st.

Q. What was that communication?

A. I was asked to register the property by the Rent Control.

Miss STEVENS. I would like to offer in evidence a communication of June 11, 1945, marked "Defendant's Exhibit F."

Q. Can you identify that communication, Exhibit F?

A. Yes; I received this communication.

Q. What did it tell you to do?

A. To register the property at Mooresville, Indiana.

Q. Were you the owner of the property on that day?

A. No.

Q. Had you received any prior communication telling you to register that property?

A. Not to my knowledge.

Mr. Rose. Objection, because Exhibit D covers that.

11 The Court. I will allow his answer to stand for what it is worth.

Miss Stevens. Exhibit D—you mean the pamphlet setting forth how to remove tenants?

Mr. Rose. That's right, and how to register properties.

Q. What was the next communication that you received, Mr. Stone?

A. On June 29th I received a copy of the order decreasing maximum rent.

Q. Mr. Stone, they sent Exhibit G to you on June 2nd, a proposed order reducing what they called the rent on the Mooresville property, and was this your reply to that letter?

A. Yes; that is my reply.

Q. The date of the reply was the 23rd of June, Exhibit H, and after that you received an order from the OPA reducing the amount that was to be received on this contract, did you—referring to Plaintiff's Exhibit 2; you received this order?

A. Yes; I have.

Q. And after you received this, did you have any contract with the tenant regarding this, what they allege as an offer?

A. Yes; I talked with the tenant in regards to refunding the money to him, and the damage and the overcharge, which he refused.

Q. Did you make an outright offer regardless of the damage to the property?

A. Yes.

Q. When you received this did you talk with him about giving back some of this money?

A. I made an offer to offset the damages to his property.

Q. Was he still living in that property at that time?

A. Yes, he was.

Mr. Rose. May I object to the last three questions for the reason that there is no proof Mr. Stone ever had an action filed against him by the tenant for overcharges.

Miss Stevens Mr. Stone sued the tenant in the Morgan

12 County court, and previous to that the tenant had made claim for overcharges.

The Court. I will let it stand.

Q. This registration which is Plaintiff's Exhibit 1, is that your registration?

A. No; it is not my registration.

Q. Who signed that registration?

A. It is signed William H. Henley.

Q. When was action taken against you by the Federal Government, Mr. Stone,—on what date?

A. February 1, 1946.

Q. Did you have any discussion with the Area Rent Office at that time about settling the case out of court? Did you offer settlement to them?

A. I offered to settle, in the presence of two attorneys.

Q. And that settlement was refused?

A. That is right.

Miss STEVENS. That is all.

Cross-examination by Mr. ROSE:

Q. You say you offered a settlement to me?

A. Yes.

Q. In what amount?

A. Three months' overcharge; $90.00.

Q. You are certain of that?

A. Yes.

Q. Isn't it a fact that you conferred with me and walked out of the office after you were in there a few minutes, stating you would not settle for any amount?

A. I offered you three months settlement, and you laughed at me.

Q. You got mad and walked out with great anger.

A. I did, after you threatened me with criminal prosecution.

Q. You know that is a false statement. You know I never threatened you with criminal prosecution?

A. Yes, you did. You said you would prosecute me
13 criminally. I said would that be a civil prosecution. You said, no.

Q. Do you mean to tell the Court I threatened to prosecute you criminally?

A. You or your assistant.

Q. Who was my assistant?

A. I don't know. I think it was Heddisheimer.

Q. He was present but he was not in on this rent matter. Was this statement made in the presence of Mr. Heddisheimer?

A. I don't know if that was the one, but you said you would prosecute me criminally.

Q. Mr. Stone, will you read Plaintiff's Exhibit 4, which is a letter addressed to you, June 26, 1945, by the Area Rent Director at Columbus, Indiana, and state whether or not you received the original of this letter.

A. Yes; I received the original of this letter.

Q. Mr. Stone, this Exhibit D that you referred to—I believe the pamphlet—you read that pamphlet on how to register properties?

A. Yes.

Q. Now you presented this contract to the Area Rent Office in Indiana on or about July 28, 1944; is that correct?

A. January 16th.

Q. Then you received a response to that inquiry shortly thereafter; is that correct?

A. January 18th they mailed me the pamphlet.

Q. I want to be sure. What is the date that you directed that to the Area Rent Office?

A. January 16th.

Q. Of 1945; is that right?

A. Yes; that's right.

Q. Now if I understood your examination correctly, you stated to your attorney the next communication you received was June 21, 1945?

A. After I received the pamphlet in answer to my letter of June 16th, the only one I have a record of. I am not sure.

Miss STEVENS. I think the notes of the reporter will show June 11th was the next.

14 Q. Do you have a record of any correspondence between you and the Area Rent Office from January to June 11, 1945, other than what you have presented so far?

A. I don't know.

Q. Did you have a conversation of any manner or form with the Area Rent Office prior to January 1945?

A. Yes.

Q. What was that?

A. I went to the office in Toledo—the Toledo Rent Office, and inquired before I entered into that contract in July whether or not this was in violation of any OPA rules.

Q. What was the date of that conversation?

A. In July; prior to the signing of this contract.

Q. Can you be a little more specific?

A. July 15th.

Q. 1945?

A. 1944.

Q. Do you know to whom you talked?

A. To the man in charge of the Rent Office.

Q. Mr. Bolan?

A. Yes.

Q. What did he tell you?

A. He told me nothing in the order covered trading in properties.

Q. Isn't it a fact he told you the Toledo office had nothing to do with the matter because it was an Indiana property?

A. No; he didn't, because trading a house in Toledo for a house in Indianapolis clearly concerns both offices.

The COURT. That is your argument now. The question is, did Mr. Bolan of this Rent Office tell you that he was not concerned with the matter because your property was located in Indiana? Did he tell you that?

The WITNESS. Not specifically, as I recall it.

The COURT. All right.

Q. However, on June 26, 1945, when you heard from Mr. Bowman, of Columbus, Indiana, he did tell you that, isn't it a fact, that the Indiana office had jurisdiction over Indiana matters?

A. That is true.

Q. Do you know whether or not there has been any complaint about this property in Toledo that concerned the Area Rent Office in Toledo; do you know?

A. No.

Q. Mr. Stone, you were the owner of this property in question in Indiana on August 1, 1944; is that correct?

A. That is correct.

Q. You were the owner continuously up until a date in 1945; is that right?

A. Yes.

Q. Do you recall the exact date of the sale to Mr. Henley?

A. April 2nd.

Q. It is a fact you sold the property to Mr. Henley which now appears on this registration statement?

A. Yes.

Q. Where did you reside from August through 1944?

A. 2506 Scottwood.

Q. When did you vacate 2506 Scottwood?

A. March 1, 1946.

Q. I am handing you now, Mr. Stone, Plaintiff's Exhibit 5, which is a letter dated June 7, 1945, addressed to you. Will you state whether or not you received the original of that letter?

A. Yes; I believe I received it.

Q. You did?

A. I believe so.

Mr. ROSE. May the record show that the original is here in Court, Miss Stevens?

Miss STEVENS. Very well.

Q. I am handing you Plaintiff's Exhibit 6, which is a letter addressed to you June 13, 1945. Will you state if you received the original of that letter?

A. I believe so. I don't know whether I did or not.

Mr. ROSE. May the record show that the original is here?

Miss STEVENS. Yes.

Q. Did you at any time in the year 1944 contact the Area Rent Office at Columbus, Indiana, with reference to this matter of renting the property, Mr. Stone?

A. No; I did not.

Q. Your first contact in the year 1945 was your letter in the early part of January; is that correct?

A. That is correct.

Q. You at no time ever made a registration for that property?

A. No; I did not.

Mr. ROSE. That is all.

Miss STEVENS. That is all.

The COURT. Just a minute. Let me have the contract.

By the COURT:

Q. I notice, Mr. Stone, this contract with Mr. Locke, dated in July 1944, says that Mr. Locke gives to you the right to act as the agent for Mr. Locke in securing for him suitable living quarters in Toledo, Ohio. Was that what it was all about?

A. That is correct; yes.

Q. Well you were taking the living quarters in Toledo, weren't you?

A. Well—he had another agent. I acquired possession through his agent—his headquarters at Toledo, Ohio.

Q. Was he to pay you $75.00 a month for acting as his agent?

A. He reimbursed me up to that amount.

Q. Agent for what?

A. To reimburse me for rent paid out.

Miss STEVENS. May I say a word? I think you should explain to the Court that it was through contacts of his that you secured a place in Toledo, and the $75.00 was to apply on whatever rent was available. I wish you would explain that arrangement you had.

The WITNESS. That is true. His proposition was to acquire a house over here in Toledo and we would trade houses.

17 Q. He agreed to pay you $75.00 a month starting August 1st, under this contract?

A. Yes.

Q. What was that for?

A. That was to reimburse me for rent paid on his account at Toledo.

Q. You were paying some rent on his account in Toledo?

A. Yes.

Q. How is that? He was living in your property at Mooresville, Indiana, wasn't he?

A. Yes.

Q. What was he paying you for that?

A. Nothing at all. We traded houses.

Q. There were no deeds exchanged?
A. No. Just the use of the property.
Q. How did you trade the property, then?
A. We traded the use of the property only.
Q. What were you paying him for living in his property at Toledo?
A. We traded the use of the property in Mooresville, and the use of the property in Toledo.
Q. And in addition he paid you $75.00 a month?
A. Which I turned over to the landlord in Toledo for his account.
Q. What were you paying him for living in his property in Toledo?
A. No actual money.
Q. You weren't paying him anything for living in his property in Toledo?
A. No.
Q. But he was paying you $75.00 a month?
A. Only as agent, which I in turn turned over to the landlord here to his account.
Q. Who is the landlord?
A. Mrs. Dolber.
Q. Where did she come into the picture?
A. She owned the house at 2506 Scottwood.
Q. I thought you said that was Locke's property?
A. No, it was——
Q. Where was Locke's property?
A. Locke loaned the property, which is the property over here, through his agent, which is me.

The COURT. I don't think I could recognize such an agreement as that. I think the Court could conclude Mr. Locke was paying Mr. Stone $75.00 a month, and that was for the rent of his property at Mooresville, Indiana. How else could the Court conclude?

Miss STEVENS. I realize, Your Honor, and I told him myself, although the rent on the first place Mr. Locke found for him was $125.00, a place on the outskirts, in a little subdivision, and he agreed to pay $75.00 towards this $125.00 rental agreement. I told him I was afraid the thing really had to be recognized as a payment of $75.00. Because of that he offered to pay overcharges, both to the tenant and the Area Rent Office, but we are claiming at this time because of Section 205–e that they cannot make any valid claim for more than the valid receipts they can show, and they cannot show anything back on February 1, 1945. Receipts back one year would be valid receipts. Back of that, under Section 205–e of the Act, action would be barred on those earlier receipts.

The COURT. It seems to me that is the only defense you have here.

Miss STEVENS. We have made an offer to consent to a judgment for that amount.

The COURT. That seems to me the only question I have to consider here. You can see the Office of Price Administration could not concern itself with such an arrangement as this in trying to enforce the rent regulations.

Miss STEVENS. Of course, these parties made this contract without benefit of counsel.

The COURT. I think that is clear. I do not think any counsel would have drafted such an agreement.

Miss STEVENS. Had there been a lawyer, all of this would have been avoided.

Mr. ROSE. I have here Mr. Patterson, who is the Area Rent
19 Director of the Toledo office, and I propose to put him on the stand to show that there was nothing involved so far as Toledo is concerned.

The COURT. I can well see without the necessity of any evidence that there can be no question about that. This property is located at Mooresville, Indiana. That is where the rent was paid, and it is alleged to be in violation of the rent regulation. I don't see how any property here under this contract, or supposed contract, could be involved.

Well is there anything further that you have to offer?

Miss STEVENS. Nothing further, Your Honor.

The COURT. That will be all.

Mr. ROSE. As I understand from the Court, it isn't necessary to have Mr. Patterson so testify as I have indicated.

The COURT. I do not think that is necessary. As I understand it, you expect to offer him to show that the Toledo Office was not concerned.

Mr. ROSE. Yes. We have the motion on Toledo jurisdiction, and Mr. Patterson would testify as I indicated. If it should be any help, I am perfectly willing to, within one week, file a further brief on the one question.

The COURT. That is the only question I have in mind. That is the question of the applicability of the statute of limitations, within the Act. If you have some particular section that takes it out of the Act under this situation, then I would like to have you cite it to me, and give counsel in opposition an opportunity to answer it.

Mr. ROSE. If we may have one week from today, I would be glad to do that.

Miss STEVENS. I would be glad to furnish a brief, also.

The COURT. Anything further?

GENERAL INSTRUCTION

The landlord is ...

UNITED STATES

PLAINTIFFS' EXHIBIT

GENERAL INSTRUCTION

The landlord is required to register separately each rental dwelling unit, whether occupied or vacant. A dwelling unit is a room or a group of rooms for which a single rent is paid. Complete this Registration Statement in triplicate. (If not typewritten, be sure sufficient pressure is used so that both carbon copies are clear and distinct.) Remove carbons, and mail or bring the three copies to the Area Rent Office. Use extra sheets, in triplicate, for sections "D" & "E" if necessary.

Maximum Rent Date _____ Effective Date _____

UNITED STATES OF AMERICA
OFFICE OF PRICE ADMINISTRATION
REGISTRATION OF RENTAL DWELLINGS
(TYPE OR PRINT PLAINLY—DO NOT FOLD)
(Do Not Use This Form for Hotels and Rooming Houses)

Form Approved Budget Bureau No. 08-R029.42
Form DD-U
Prv'd 9-44 Req'n V-250

AREA OFFICE COPY

IDENTIFICATION

1. 148 W. Washington St. Moorsville, Ind.
   Address of this rental dwelling unit
2. _____
   Apartment number or location 10
3. Number of Rooms in unit being registered _____
4. Total Number of dwelling units in this structure 1

SECTION A. MAILING ADDRESS OF LANDLORD

1. Name of Landlord Wm. H. Hanley
2. Name of Agent _____
3. Address Mail to:

Name William H. Hanley

Address 227 West Main Street

City and State Moorsville, Indiana

SECTION B. MAILING ADDRESS OF TENANT

Name of Tenant Charles W. Leeke

Address 148 W. Washington Street

City and State Moorsville, Indiana

Registered Area Rent Office OPA

SECTION C. MAXIMUM RENT

Read carefully and fill in every item which applies to this dwelling unit.

1. Rent on "Maximum Rent date" $_____ per week ( ) per month ( ).
2. Not rented on "Maximum Rent date" but rented at any time during the two-month period ending on "Maximum Rent date."
   Date last rented during that two-month period: _____, 194__
   Rent on that date: $_____ per week ( ) per month ( )
3. Not rented on "Maximum Rent date" nor at any time during the two-month period ending on "Maximum Rent date," but rented after "Maximum Rent date."
   Check one box if applicable:
   [ ] (a) Owner occupied or vacant on "Maximum Rent date" and during two-month period ending on "Maximum Rent date."
   [ ] (b) Newly constructed without priority rating.
   [ ] (c) Newly constructed with priority rating. (If checked, item 6 must also be filled in)
   Date first rented after "Maximum Rent date" May 7, 1945 by me as purchaser on April 7, 1945.
   Rent on that date: $75.00 per week ( ) per month (X)
4. Dwelling unit made available by a change which resulted in an increase or decrease in the number of dwelling units after "Maximum Rent date."
   Date first rented after such change: _____, 194__
   Rent on that date _____ per week ( ) per month
5. Substantially changed after "Maximum Rent date," but before the effective date." Check one box if applicable:
   [ ] (a) From unfurnished to fully furnished.
   [ ] (b) From fully furnished to unfurnished.
   [ ] (c) By a major capital improvement AS DISTINGUISHED FROM ORDINARY REPAIR, REPLACEMENT AND MAINTENANCE.
   Date first rented after such change: _____ 194__
   Rent on that date: $_____ per week ( ) per month ( )
6. Dwelling unit newly constructed with a priority rating from the United States or any agency thereof.
   Rent approved by agency granting priority: $_____ per week ( ) per month ( )

THE MAXIMUM RENT FOR THIS DWELLING UNIT IS:

$75.00 per week ( ) per month (X)

Enter Maximum Rent in accordance with the following instructions:

(a) If only one of the above Items applies to this dwelling unit the Maximum Rent is the rent entered for that Item.

SECTION D. EQUIPMENT AND SERVICES.

(Check the equipment and services included in the rent on "Maximum Rent date" or the most recent date you entered in Section C.) (ANSWER "YES" or "NO").

1. EQUIPMENT	YES	NO
Furniture	[ ]	[X]
Running Water	[X]	[ ]
Hot Water	[X]	[ ]
Flush Toilet	[X]	[ ]
Bathroom	[X]	[ ]
Central Heating	[X]	[ ]
Heating Stove	[ ]	[X]
Mech. Refrigerator	[ ]	[X]
Electricity Installed	[X]	[ ]
Cooking Stove	[ ]	[X]

If any equipment is shared, explain below:
all having hot water 1

2. SERVICES	YES	NO
Garage	[X]	[ ]
Heat or Heating Fuel	[X]	[ ]
Cooking Fuel	[ ]	[X]
Cold Water	[ ]	[X]
Hot Water	[ ]	[X]
Light	[ ]	[X]
Ice or Refrigeration	[ ]	[X]
Janitor Service	[ ]	[X]
Garbage Disposal	[ ]	[X]
Painting & Decorating	[X]	[ ]
Interior Repairs	[X]	[ ]
Exterior Repairs	[X]	[ ]

List any other services:

_____per week ( ) per month

5. Substantially changed after "Maximum Rent date," but before the effective date." Check one box if applicable:
   - ☐ (a) From unfurnished to fully furnished.
   - ☐ (b) From fully furnished to unfurnished.
   - ☐ (c) By a major capital improvement AS DISTINGUISHED FROM ORDINARY REPAIR, REPLACEMENT AND MAINTENANCE.

   Date first rented after such change: _____ 194____.
   Rent on that date: $_____ per week ( ) per month ( )

6. Dwelling unit newly constructed with a priority rating from the United States or any agency thereof.
   Rent approved by agency granting priority: $_____ per week ( ) per month ( )

THE MAXIMUM RENT FOR THIS DWELLING UNIT IS:

$ 75.00 per week ( ) per month (X)

Enter Maximum Rent in accordance with the following instructions:

(a) If only one of the above Items applies to this dwelling unit the Maximum Rent is the rent entered for that Item.
(b) If more than one of the above Items apply to this dwelling unit the Maximum Rent is the rent reported for the most recent date; except in the case of Item 6.
(c) If item 6 applies to this dwelling unit the Maximum Rent is the lower of the rents entered in Items 1, 3 or 6.
* Note: If any one of the Items 3(b), 4 or 5 applies to this dwelling unit you must also fill in the information required in Section "E." The Rent Director may at any time order a decrease in the Maximum Rent determined under Items 3(a), 3(b), 4 or 5, on the grounds that the rent is higher than the rent generally prevailing for comparable housing accommodations on the "Maximum Rent date."

8. Order issued by Rent Director dated _____ established maximum rent in amount of $_____ per week ( ) per month ( )

2. SERVICES	YES	NO
Garage	X	
Heat or Heating Fuel		X
Cooking Fuel		X
Cold Water		X
Hot Water		X
Light		X
Ice or Refrigeration		X
Janitor Service		X
Garbage Disposal		X
Painting & Decorating	X	
Interior Repairs	X	
Exterior Repairs	X	

List any other services:

Are all equipment and services indicated above now included in the rent? Yes ( ) No ( )
If "No" you must also file Form D-2.

Section E - See Note Section C, 7*

If item 3(b), 4 or 5 of Section C was filled in, set forth in specific detail the type and cost of:
(a) New construction (c) A change from unfurnished to fully furnished
(b) A change in the number of dwelling units (d) A major capital improvement

Del. Mg. a former L.L. was Chas. Stone who started renting to this tenant 8-1-44 20,691 (5e 1 & 54) Maximum Rent Changed by Order of Rent Director 6/28/45 to $45.00 per month.

WARNING

The rent for this dwelling unit on and after the "effective date" can be no more than the Maximum Rent entered in Section C, Item 7, unless changed by order of the Rent Director (see Section C, Item 8).

A false statement on this form or an evasion or attempted evasion of the Maximum Rent Regulation may subject you to a $5,000 fine or imprisonment for one year.

I HEREBY REPRESENT that all statements and entries given hereon are true and correct.

(Signed) Wm. H. Ensley
(Signature of Landlord or His Agent)

EXHIBIT "1"

771384 O - 48 (Face p. 14)

Mr. ROSE. Nothing further.
Miss STEVENS. No.

23 *Plaintiff's Exhibit 2*

Copy

OPA
Form D–38

United States of America

Office of Price Administration

ORDER DECREASING MAXIMUM RENT

Stamp of Issuing Office. Area Rent Office, 633 Washington Street, Columbus, Indiana.

Concerning (Description of Accommodations): 148 West Washington Street, Mooresville, Indiana. Docket No. 20,691.

To (Name and Address of landlord): Charles W. Stone, Box 296, Toledo, Ohio.

Due notice having been given the landlord of the above-described accommodations, the Rent Director has considered the evidence in this matter and finds that the facts in this case require a reduction of the Maximum Rent on the grounds stated in Section (s) 5 (c) (1) and 5 (d) of the Rent Regulation.

Therefore, on the basis of the rent which the Rent Director finds was generally prevailing in this Defense-Rental Area for comparable housing accommodations on the Maximum Rent Date, it is ordered that the Maximum Rent for the above-described accommodations be, and it hereby is, changed from $75.00 per month to $45.00 per month.

Issued June 28, 1945 and effective beginning (see below). No rent in excess of the Maximum Rent established by this order may be received or demanded. This order will remain in effect until changed by the Office of Price Administration.

(S) WILLIAM J. BOWMAN.
Rent Director.

24 From the date of such first renting or from the beginning of the first rental period on or after October 1, 1943, or the effective date of the Regulation, whichever is the later.

Copy to (Name and Address of Tenant): C. F. A. Locke, 148 West Washington Street, Mooresville, Indiana.

The Landlord shall refund to the Tenant any rent Received on or after the effective date of this order in excess of the Maximum

Rent established herein ($45.00 per month) within 30 days after date of this order.

Plaintiff's Exhibit 3

(Plaintiff's Exhibit "3" consists of eight (8) checks, in the sum of $75.00 each, numbered 34, 38, 49, 58, 76, 98, 102, and 115 issued as of July 29, 1944, September 1, 1944, October 3, 1944, November 2, 1944, December 5, 1944, January 17, 1945, January 31, 1945 and March 12, 1945, by C. F. A. Locke to the order of Charles W. Stone. All eight (8), bearing endorsement of C. W. Stone and bank and clearing house stamps are substantially as follows:)

FLETCHER TRUST COMPANY

INDIANAPOLIS, IND.

No. 34

7—29—1944.

Pay to the Order of
Charles W. Stone ---------- $75.00
Seventy-five Dollars and ---------- 00 Cents

(S) C. F. A. LOCKE.

25 *Plaintiff's Exhibit 4*

AREA RENT OFFICE
633 Washington Street
COLUMBUS, INDIANA

JUNE 26, 1945.

Re: 20,691—148 West Washington Street, Mooresville, Indiana

Mr. CHARLES W. STONE,
Box 296, Toledo, Ohio.

DEAR SIR: This is in reply to your letter of June 23, 1945, relative to the above-described housing accommodation and the notice of proceedings to determine the maximum rent therefor.

All matters relating to housing and the Regulation pertaining thereto which is situate in this Defense Rental Area of which Mooresville, Indiana, is a part are strictly the province of this, the Columbus, Indiana, Defense Rental Area, therefore, the Area Rent Office of Toledo, Ohio, properly advised you that housing situated in this Area is the concern of this office.

You ask what part of the Rent Regulation was violated by this "exchange;" attached hereto you will find a copy of the Regulation for Housing now in effect in this Area and I direct your particu-

lar attention to Section 4, subsection (e), also Sections 7, 9, and 12 of the above Regulation.

The notice given to you on June 21, 1945, was to inform you as to the proceedings by this Director to adjust the maximum rent upon the above-described housing accommodations as provided by Section 5 (c) (1) of the Regulation, and to give you an opportunity to file written objections thereto.

Attached hereto you will find a copy of Section (e) of Section 205 of the Emergency Price Control Act of 1942, as amended, to which your attention is also directed.

26 I think that this will properly inform you; however, if there are further questions that you have relative to the above matter we will be glad to inform you to the best of our ability.

Yours very truly,

WILLIAM J. BOWMAN,
Area Rent Director-Attorney.

CC: Mr. Henry J. Zetzer.

Plaintiff's Exhibit 5 3721

OFFICE OF PRICE ADMINISTRATION RENT DIVISION

AREA RENT OFFICE

633 Washington Street

COLUMBUS, INDIANA

JUNE 7, 1945.

CHAS. W. STONE,
P. O. Box 296, Toledo, Ohio.

DEAR SIR: According to the records of this office it does not appear that you have filed a registration statement for the dwelling units rented by you at: 148 W. Washington St., Mooresville, Indiana.
Street Apt. No. City State

Under the provisions of the rent regulations, landlords renting any type of living quarters were required to register on or before Oct. 15, 1942. Where housing accommodations are added to the premises or first rented after Oct. 15, 1942, the registration form must be filed within 30 days after the rooms or apartments are first rented.

27 Since the registration form is now overdue, it would appear that you may be in violation of the law. You are therefore requested to fill in the enclosed registration statement with complete and legible information and return all copies to this office immediately. When edited the landlord's copy will be returned to you.

This property is not registered until the correctly completed form is received by this office.

Yours very truly,

WILLIAM J. BOWMAN,
Area Rent Director,
Columbus Defense-Rental Area.

Enclosure.

Plaintiff's Exhibit 6

AREA RENT OFFICE
633 Washington Street
COLUMBUS, INDIANA

JUNE 13, 1945.

In Re: 148 West Washington Street, Mooresville, Indiana

Mr. C. W. STONE,
P. O. Box 296, Toledo, Ohio.

MY DEAR MR. STONE: We have information that on or about the first day of August 1944 you were the owner of the property situate at 148 West Washington Street, Mooresville, Indiana, and at that time rented said property to a tenant by the name of Charles Locke, charging therefor, as rental, $75.00 per month.

If this is the facts, then under the Regulation for Housing now in effect in this area you were required within thirty days from the first renting thereof to file in the area rent office a registration statement, and your failure so to do would be a direct violation of the Regulation.

Enclosed herewith you will find a form of registration statement and instruction sheet informing you how to fill out same, which you should fill out and return all three copies to this office at once.

Yours very truly,

WILLIAM J. BOWMAN,
Area Rent Director-Attorney.

WJB:rs.
Enc.
CC: Mr. Henry J. Zetzer, Regional Rent Attorney.

Defendant's Exhibit A

Date: 7-28-44.

This is a limited agency contract between Charles Locke, hereafter known as the party of the first part, and Charles Stone, hereafter known as the party or the second part.

The party of the first part hereby gives the party of the second part the right to act as the agent for the party of the first part

in securing for the party of the first part suitable living quarters at Toledo, Ohio. It is understood that the party of the second part will act in his own name, but for the account of the party of the first part. The party of the first part agrees to pay the party of the second part at the rate of Seventy-five dollars a month ($75.00) starting August first. The payment of ($75.00) shall be in the hands of the party of the second part on or before the first day of each month to cover that calendar month
29 in advance. These funds are to be used by the party of the second part to pay rent on quarters obtained.

The party of the second part agrees not to act beyond his rights as granted under this instrument.

This contract is cancellable by either party on thirty days notice which is to be given on the first day of the month.

Signed at Indianapolis, Indiana. Date: 7-28-44

Party of the first part:

C. F. A. Locke.

Party of the second part:

C. W. Stone.

Defendant's Exhibit B

Registered Mail.
Receipt No. 7841—1-16-45.

Toledo, Ohio,
January 16, 1945.

O. P. A. Area Rent Control Office,
Columbus, Indiana.

Gentlemen: I am enclosing copy of contract concerning my property at Mooresville, Indiana, which is more or less self explanatory. Last summer I was temporarily transferred to Toledo and up until that time I had lived in the house seven years.

At the time contract was made my attorney advised me that this loan did not conflict with the rent control laws. It is not my intention to break any laws and to make sure is the reason I am sending copy of contract. Will appreciate your advising me if this is not in order.

Yours very truly,

C. W. Stone,
P. O. Box No. 296, Toledo, Ohio.

30 *Defendant's Exhibit C*

Date: 9-30-44.

This is supplement No. 1 to contract between Charles Locke and Charles Stone of July 29, 1944, correcting the following words.

In the sixth line delete (3324 Island Avenue) and add in their place (2506 Scottwood).

Party of the first part:

C. F. A. LOCKE.

Party of the second part:

C. W. STONE.

Defendant's Exhibit D

ENVELOPE

COLUMBUS, IND.,
Jan. 18, 1945, 9 P. M.

Office of Price Administration, Area Rent Office, 633 Washington Street, Columbus, Indiana.
Official Business.

C. W. STONE,
P. O. Box No. 296,
Toledo, Ohio.

31 *Defendant's Exhibit D-1*

RENT REGULATION FOR HOUSING

Section 6

Removal of Tenant

(a) Restrictions on removal of tenant. So long as the tenant continues to pay the rent to which the landlord is entitled, no tenant shall be removed from any housing accommodations, by action to evict or to recover possession, by exclusion from possession, or otherwise, nor shall any person attempt such removal or exclusion from possession, notwithstanding that such tenant has no lease or that his lease or other rental agreement has expired or otherwise terminated, and regardless of any contract, lease, agreement or obligation heretofore or hereafter entered into which provides for entry of judgment upon the tenant's confession for breach of the covenants thereof or which otherwise provides contrary hereto, unless:

(1) Tenant's refusal to renew lease. The tenant who had a written lease or other written rental agreement, has refused upon demand of the landlord to execute a written extension or renewal thereof for a further term of like duration but not in excess of one year but otherwise on the same terms and conditions as the previous lease or agreement, except insofar as such terms and conditions are inconsistent with this regulation; or

(2) Tenant's refusal of access to landlord. The tenant has unreasonably refused the landlord access to the housing accommo-

dations for the purpose of inspection or of showing the accomodations to a prospective purchaser, mortgagee, or prospective mortgagee, or other person having a legitimate interest therein: Provided, however, That such refusal shall not be ground for removal or eviction if such inspection or showing of the accomodations is contrary to the provision of the tenant's lease or other rental agreement; or

(3) Violating obligation of tenancy or committing nuisance.—The tenant (i) has violated a substantial obligation of his tenancy, other than an obligation to pay rent, and has continued, or
32 failed to cure, such violation after written notice by the landlord that the violation cease, or (ii) is committing or permitting a nuisance or is using or permitting a use of the housing accommodations for an immoral or illegal purpose; or

(4) Subtenants on expiration of tenant's lease.—The tenant's lease or other rental agreement has expired or otherwise terminated, and at the time of termination the occupants of the housing accomodations are subtenants or other persons who occupied under a rental agreement with the tenant, and no part of the accommodations is used by the tenant as his own dwelling; or

(5) Demolition or alteration by landlord.—The landlord seeks in good faith to recover possession for the immediate purpose of demolishing the housing accommodations or of substantially altering or remodeling it in a manner which cannot practicably be done with the tenant in occupancy and the plans for such alteration or remodeling have been approved by the proper authorities, if such approval is required by local law; or

(6) Occupancy by landlord.—The landlord owned, or acquired an enforceable right to buy or the right to possession of, the housing accommodations prior to the effective date of regulation (or prior to October 20, 1942 where the effective date of regulation is prior to that date) and seeks in good faith to recover possession of such accommodations for immediate use and occupancy as a dwelling for himself. If a tenant has been removed or evicted under this paragraph (a) (6) from housing accommodations, the landlord shall file a written report on a form provided therefor before renting the accommodations or any part thereof during a period of six months after such removal or eviction.

(b) Administrator's certificate—(1) Removals not inconsistent with Act or regulation.—No tenant shall be removed or evicted on grounds other than those stated above unless, on petition of the landlord, the Administrator certifies that the landlord may pursue his remedies in accordance with the requirements of
33 the local law. The Administrator shall so certify if the landlord establishes that removals or evictions of the character proposed are not inconsistent with the purposes of the Act

or this regulation and would not be likely to result in the circumvention or evasion thereof.

(2) Occupancy by purchaser.—A certificate shall be issued authorizing the pursuit of local remedies to remove or evict a tenant of the vendor for occupancy by a purchaser who has acquired his rights in the housing accommodations on or after the effective date of regulation (or on or after October 20, 1942 where the effective date of the regulation is prior to that date) only as provided in this paragraph (b) (2).

(i) Where the Administrator finds that the payment or payments of principle made by the purchaser aggregate twenty percent or more of the purchase price, he shall, on petition of either the vendor or purchaser, issue a certificate authorizing the vendor or purchaser to pursue his remedies for removal or eviction of the tenant in accordance with the requirements of the local law. Except as hereinafter provided, the certificate shall authorize pursuit of local remedies at the expiration of three months after the date of filing of the petition.

The payment or payments of principle may be made by the purchaser conditionally or in escrow to the end that they shall be returned to the purchaser in the event the Administrator denies a petition for a certificate.

Any payments of principle made from funds borrowed for the purpose of making such payments shall be excluded in determining whether twenty percent of the purchase price has been paid, unless the Administrator finds that the loan is made in good faith and not for the purpose of circumventing or evading the provisions of this paragraph (b) (2).

Where property other than the housing accommodations which are the subject of the purchase is mortgaged or pledged to the vendor to secure any unpaid balance of the purchase price,
34 the payment requirement shall be deemed satisfied if the value of such security, plus any payments of principal made from funds not borrowed for the purpose of making such principal payments, equal twenty percent or more of the purchase price.

(ii) Where the Administrator finds (a) that equivalent accommodations are available for rent into which the tenant can move without substantial hardship or loss, or (b) that the vendor has or had a substantial necessity requiring the sale and that a reasonable sale or disposition of the accommodations could not be made without the removal or eviction of the tenant, or (c) that other special hardship would result, a certificate may be issued although less than twenty percent of the purchase price has been paid and may authorize the vendor or purchaser to pur-

sue his remedies for removal or eviction of the tenant at a time less than three months after the date of filing the petition.

(c) Exceptions from section 6—(1), Subtenants.—The provisions of this section do not apply to a subtenant or other person who occupied under a rental agreement with the tenant, where removal or eviction of the subtenant or other such occupant is sought by the landlord of the tenant, unless under the local law there is a tenancy relationship between the landlord and the subtenant or other such occupant.

(2) Housing subject to rent schedule of War or Navy Department.—The provisions of this section shall not apply to housing accommodations rented to either Army or Navy personnel, including civilian employees of the War and Navy Departments, for which the rent is fixed by the national rent schedule of the War or Navy Department.

(3) One or two occupants in landlord's residence.—The provisions of this section shall not apply to an occupant of a furnished room or rooms not constituting an apartment, located within the residence occupied by the landlord or his immediate family, where such landlord rents to not more than two occupants within such residence.

(4) Renting to family in landlord's residence.—The provisions of this section shall not apply to a family which on or after August 1, 1943 moves into a furnished room or rooms not constituting an apartment, located within the residence occupied by the landlord or his immediate family, where such landlord does not rent to any persons within such residence other than those in the one family.

(d) Notices required—(1) Notices prior to action to remove tenant.—Every notice to a tenant to vacate or surrender possession of housing accommodations shall state the ground under this section upon which the landlord relies for removal or eviction of the tenant. A written copy of such notice shall be given to the area rent office within 24 hours after the notice is given to the tenant.

No tenant shall be removed or evicted from housing accommodations by court process or otherwise, unless at least ten days (or, where the ground for removal or eviction is non-payment of rent, the period required by the local law for notice prior to the commencement of an action for removal or eviction in such cases, but in no event less than three days) prior to the time specified for surrender or possession and to the commencement of any action for removal or eviction, the landlord has given written notices of the proposed removal or eviction to the tenant and to the area rent office, stating the ground under this section upon which

such removal or eviction is sought and specifying the time when the tenant is required to surrender possession.

Where the ground for removal or eviction of a tenant is nonpayment of rent, every notice under this paragraph (d) (1) shall state the rent for the housing accommodations, the amount of rent due and the rental period or periods for which such rent is due. The provisions of this paragraph (d) (1) shall not apply where a certificate has been issued by the Administrator pursuant to the provisions of paragraph (b) of this section.

(2) Notices at time of commencing action to remove tenant.—At the time of commencing any action to remove or evict
36 a tenant, including an action based upon nonpayment of rent, the landlord shall give written notice thereof to the Area Rent Office stating the title of the case, the number of the case where that is possible, the court in which it is filed, the name and address of the tenant, and the ground under this section on which removal or eviction is sought.

(e) Local Law.—No provision of this section shall be construed to authorize the removal of a tenant unless such removal is authorized under the local law.

Defendant's Exhibit D-2

OPA FORM D-301.

QUESTIONS AND ANSWERS ON FEDERAL RENT CONTROL

OPA

United States of America

Office of Price Administration

Washington, D. C.

JANUARY 1944.

QUESTIONS AND ANSWERS ON FEDERAL RENT CONTROL

Because rent is the second largest item in the cost of living, high rents and threats of eviction contribute to labor turn-over and discontent. Federal rent control, as provided for in the Emergency Price Control Act of 1942, tends to eliminate these conditions and contributes to production. It is a major part of price control operating to prevent inflation.

Below are listed most of the pertinent currently asked questions on Rent Control with the answers. If the particular question you wish answered is not shown here, send the written question to the Area Rent Office nearest you.

37 WHAT RENTS ARE CONTROLLED

Congress has authorized the Federal Government to control rents in Defense-Rental Areas for all rental housing—wherever people live and pay rent. Two types of Regulations have been issued by the OPA. The Housing Regulation applies to houses, apartments, flats, and tenements. The Hotel and Rooming House Regulation applies to all rooms in hotels, boarding or rooming houses, and to auto and trailer camps. If a landlord is in doubt as to which Regulation applies to his particular property, he should call at the Area Rent Office.

1. Q. Does rent control apply to a dwelling on a farm?

A. No; if the tenant is working on the farm most of his time.

2. Q. Can a farm house be rented separately from the land?

A. Yes; and is then under rent control.

3. Q. Is there any control over commercial rents?

A. No. The Emergency Price Control Act does not apply to commercial rents.

4. Q. In what way is a combination store and dwelling affected by rent control?

A. The answer depends generally on the following facts:

(1) If the arrangement of the store and dwelling is such that separate tenants could occupy the store and dwelling, the dwelling portion only is subject to rent control.

(2) If the property cannot be so separated and the greater part is used commercially, then the entire property is free from rent control.

(3) If the property cannot be separated, and the greater part is used for a dwelling, then the whole unit is subject to the Rent Regulation, unless the rental value of the store is clearly in excess of the rental value of the dwelling.

38 SETTING MAXIMUM RENTS BY DATES

In fixing the rent ceiling, the Government does not attempt the task of inspecting the living quarters of each of our country's 16 million rent-paying families in setting a maximum rent for each place. Instead, the Price Administrator selects a maximum rent date for rent control areas and directs that, as a general principle, rents must not exceed the rents in effect on that date.

5. Q. How is the maximum rent date determined and what do you base rental values on?

A. The Rent Regulation does not fix rents on value; rather, we follow the method authorized by Congress and operate on the principle of the maximum rent date. This attempts to stabilize

rents as they were fixed by landlords and tenants in normal times. The area rent office will tell you the maximum rent date for your area.

REGISTRATION OF DWELLINGS

In order to protect both the landlord and the tenant and to find out the rent on the maximum rent date, the Rent Regulations provide generally that all rented premises be registered.

6. How does the tenant know what the maximum rent is?

A. Under the Rent Regulation a landlord must file a registration statement with the Area Rent Office, and copy is sent to the tenant.

7. Q. What kind of living quarters are to be registered under the Regulations?

A. All property rented or offered for rent for dwelling purposes. (See Questions 1 and 4 for some of the exceptions.)

8. Q. What is the penalty for not registering housing?

A. The penalties provided in the Emergency Price Control Act are fines up to $5,000 or one year's imprisonment or both.

39 9. Q. Must a tenant who subrents also file a registration statement?

A. Yes.

10. Q. I sometimes rent out a room on special occasions. Must I register?

A. Yes.

11. Q. I am a new tenant and have never seen a copy of the registration statement. How can I find out what my rent is and what services it includes?

A. If your landlord does not have a copy of the registration, you may get the information at the Area Rent Office.

CHANGE OF TENANCY

12. Q. Must the landlord register again when he gets a new tenant?

A. No, but he must file with the Area Rent Office a "Notice of Change in Tenancy" and he must secure the tenant's signature on the "Notice of Change in Tenancy," which indicates the maximum rent.

13. Q. Why is it necessary to file change in tenancy?

A. To assure new tenants that they do not pay more than the maximum rent.

14. Q. When one tenant moves out, may I charge the next tenant a higher rent?

A. Not if the higher rent is more than the maximum rent.

15. Q. What happens to a landlord if he is late in filing change of tenancy?

A. Failure to file the change in tenancy form within 5 days places the landlord in violation of the Rent Regulation and subject to its penalties.

HOW CAN A LANDLORD RAISE HIS RENTS?

In certain cases the Rent Regulations permit adjustment of maximum rents where conditions have changed since the maximum rent date. The grounds on which the Rent Director may raise the maximum rent are limited.

40 It should be noted that landlords must petition the Rent Director on forms provided for this purpose and must secure an order approving an adjustment in rent before collecting the new rent.

16. Q. Upon what grounds may a landlord apply for an increase in rent?

A. The landlord may petition to raise his rents on the following grounds:

(1) Substantial alterations to the premises, by a major capital improvement.

(2) Substantial increase in services or furnishings.

(3) Rents based on personal or special relationships between the landlord and tenant, where the rent on the maximum rent date was substantially lower than comparable rents in the area.

(4) In some cases where there has been an increase in the number of occupants of the property.

(5) In some cases where special leases call for different monthly rents during the lease.

(6) Where the terms of the lease in force on the maximum rent date began more than one year before that date and provided rents substantially lower than comparable rents in the area.

(7) In some cases where the premises are rented on a seasonal basis, such as resort areas.

(8) Where the property was temporarily exempt from real estate taxes on the maximum rent date and the landlord passed the benefit of this tax exemption on to the tenant by giving a rent substantially lower than comparable rents in the area.

17. Q. How can I increase the maximum rent on my property?

41 A. If you can qualify under one of the grounds mentioned above, you must petition the Area Rent Office and get a higher rent approved by the Rent Director before you can charge more rent.

18. Q. If a landlord believes his rent is too low, how can he get it raised?

A. If he can qualify under one of the grounds mentioned above, he may petition the Area Rent Office for an increase.

19. Q. The rent which I am charging for my housing is less than my neighbor charges and why can't I charge what he does?

A. The Rent Regulation does not attempt to equalize rents which were collected on the maximum rent date. It attempts to hold them at the levels that were established by landlords themselves in normal times.

20. Q. I have three identical apartments. Two rent at $40, one at $35. Can I raise the rent on the third to equalize?

A. No; because these rents were not equal on the maximum rent date.

21. Q. My tenant says that my apartment is worth more than he is paying—can I collect more rent since it is all right with the tenant?

A. No. To accept more than the maximum rent, even though the tenant agreed to pay it, would be a violation of the Regulation.

22. Q. May I raise my rent because the tenant is making higher wages?

A. No. This is not one of the grounds upon which an increase may be granted.

MAJOR CAPITAL IMPROVEMENT

23. Q. What constitutes a major capital improvement?

A. A major capital improvement which substantially
42 increases the rental value of the premises and for which improvement the landlord may petition for an increase in rent, will fall into one of the following:

(1) A structural addition. This is a clear addition to the premises such as the building of an additional room or the installation of plumbing, heating, or electricity where such equipment did not previously exist.

(2) A structural betterment, such as the modernization of an existing bathroom or kitchen or the replacing of a very old heating system with a more modern heating plant.

(3) A complete rehabilitation. Taken all together, this is a general improvement and reconditioning such as would place the property in a higher rental range. This is a general overhauling of the premises and not ordinary upkeep.

24. Q. If a furnace is replaced, can the rent be increased?

A. This is to be determined by the facts of the case. If the new furnace is the type that would have brought a higher rent on the maximum rent date by definitely improving the heating

system so that the premises are more desirable now, then the Rent Director may approve a higher rent.

25. Q. Can the landlord obtain an increase in rent if the tenant uses more utilities such as gas and electricity than were used on the maximum rent date?

A. Usually in such cases where adjustments are granted it will be because an increase in the use of such services results from increased occupancy.

26. Q. If the premises have been redecorated, can the rent be raised?

43 This is to be determined from the facts in each particular case. If the landlord furnished decoration on the maximum rent date, he is not entitled to an increase in rent. However, if the landlord was not supplying decoration on the maximum rent date and he has now redecorated the premises he may petition for an increase in rent.

27. Q. I am now going to furnish my apartment which was not previously rented furnished. May I charge more rent?

A. Yes, you may set your own first rent and must within 30 days register the property at the Area Rent Office. The Rent Director may reduce this rent if he finds it to be higher than the prevailing rent for similar furnished premises on the maximum rent date. You may, if you wish, ask the Rent Director's opinion of a proper rent before renting.

28. Q. If landlord is renting furnished rooms and later adds kitchen privileges, can he get an increase in rent for these additional privileges?

A. Yes; if the privileges given to the tenant amount to a substantial increase in services, the landlord may file a petition with the Area Rent Office for a rent increase.

SPECIAL RELATIONSHIPS

29. Q. If on the maximum rent date the occupant was a blood relation, can I increase the rent on a new tenant?

A. In such a case if the rent was substantially lower than the rent charged for similar premises on the maximum rent date because of the blood relationship, you may petition the Area Rent Office for a rent increase.

30. Q. On the maximum rent date my tenant had been with me for a long time on a month-to-month basis. I was satisfied with him and I had not raised his rent. Can I increase the rent on a new tenant?

44 A. No; this is not a ground for an increase under the new Rent Regulation.

31. Q. My tenant had an accident and he was in the hospital on the maximum rent date. His wife and two children remained on the premises and I reduced the rent from $50 to $35 because I was sorry for them. My tenant has recovered and is able and willing to pay the regular rent of $50. May I raise his rent?

A. In such a case you may file a petition in the Area Rent Office for a rent increase, and an increase may be granted if the $35 rent on the maximum rent date was lower than comparable rents.

SEASONAL RENTS

32. Q. For five years my landlord charged me $40 per month in winter and $35 in summer. The maximum rent date is in winter. He has refused to lower my rent during summer. Must the landlord reduce the rent in summer?

A. The tenant may file an application for a decrease in the rent during the summer months. Until an order of the Rent Director is issued reducing the rent, the rent is $40 per month.

INCREASED OCCUPANCY

33. Q. Can an increase be granted in the rent if more people are living in the house or other dwelling than were living there on the maximum rent date?

A. The landlord may petition for an increase in rent only if:

(1) An increase in the number of occupants over the number provided in the rental agreement on the maximum rent dat[illegible]d the landlord had a definite practice of fixing different r[illegible] for different numbers of occupants, or

(2) There has been an increase in the number of occupants because the tenant is subletting to more people than he was on the maximum rent date, or

(3) If the present number of occupants is more than would ordinarily live in that type of dwelling.

34. Q. When the tenant moved in there were three people in the family and now they have a baby. Can I collect more rent?

A. Generally no.

35. Q. Can I have my brother and wife, war workers, live with me without the consent of my landlord?

A. This would depend upon your rental agreement with the landlord or the provisions of the local law.

LEASES

Two classes in an ordinary lease are affected by the Rent Regulations. One of these is the amount of rent payment. Even

though this clause provides for a higher rent than that fixed by the Rent Regulation, the landlord may not demand or receive this higher amount. The other is the "vacating" clause contained in leases under which the tenant agrees to surrender his premises at the end of the lease. Under the Rent Regulation this clause is also no longer in force.

36. Q. May the landlord evict me if I refuse to sign a renewal of my lease on the same terms and conditions?

A. Yes; but the landlord may not demand a renewal for more than one year, and the lease must not contain provisions in violation of the Rent Regulation.

37. Q. If the Rent Regulation changes the rent provided in a lease, why doesn't the Regulation cancel the entire lease?

A. Rent control in wartime is intended to stabilize rents
46 and protect the occupancy of tenants. The Regulations are not intended to void leases or change the ordinary rental practices between landlords and tenants that existed before the war.

38. Q. My landlord refuses to renew my lease. Should I insist on a lease or am I protected without it?

A. The Rent Regulations do not compel landlords to renew expiring leases. However, a tenant may not be evicted or charged more than the maximum rent simply because he does not have a lease.

FIRST RENTS

39. Q. How much can I charge for premises which are now being rented for the first time and what must I do to comply with the Rent Regulation?

A. The landlord may set his own rent. He must, within 30 days, register this property with the Area Rent Office. The Rent Director may reduce this rent if it is higher than the prevailing rate for similar premises on the maximum rent date.

40. Q. Can the Rent Office approve the rent before the premises are rented for the first time?

A. Yes; if a landlord requests it, a Rent Director may give a prior opinion before the premises are first rented. However, a landlord does not need to get the Rent Director's approval before renting the premises for the first time. The Regulation does give the Rent Director the authority to reduce a first rent if it is higher than prevailing rent for similar premises on the maximum rent date.

SERVICES AND REPAIRS

Generally the maintenance of services and repairs provided by the landlord on the maximum rent date are controlled by the Rent

Regulation. If your services have been substantially reduced, your Rent Director may reduce the rent.

47 41. Q. Does the landlord have to provide the same services now as he did on the maximum rent date?

A. Yes; as to essential services, such as heat, light, gas, etc. However, the scarcity of help and materials due to the war affects this situation and nonessential services, therefore, can be expected to be reduced to some extent without warranting a decrease in rent.

42. Q. I want to sublet my apartment furnished. How much can I charge for it?

A. If this apartment has never been rented furnished before, you may set your own rent. You must then register this property, within 30 days, with the Area Rent Office and the Rent Director may reduce the rent if it is higher than prevailing rent for similar premises on the maximum rent date.

43. Q. I am now paying the water, gas, and electricity bills, and I would like to have the tenant pay for them. Can I do this?

A. Before you can make this change, you must petition the Area Rent Office for and secure permission. The Rent Director in these cases is authorized to order a reduction in rent. However, when the property becomes vacant, the landlord may make such changes before renting to a new tenant, but he must notify the Area Rent Office of these changes within ten days.

44. Q. My landlord says he cannot secure replacement parts for refrigerator and other mechanical equipment. Can I get a decrease in rent?

A. You may file an application with the Area Rent Office for a decrease in rent. Within ten days of a decrease in such services, the landlord must petition the Area Rent Office for approval of such decrease, and the Area Rent Office may order a decrease in rent if the decrease in services is substantial.

48 45. Q. I rented my property furnished and now I want to rent it to the same tenant unfurnished.

A. You should immediately file a petition with the Area Rent Office, requesting permission to remove the furniture.

46. Q. I am renting my house with garage for $30 per month. My tenant does not have an automobile. Can I rent my garage to someone else?

A. You must first petition the Area Rent Office and obtain permission to eliminate the garage service you are now providing the tenant.

47. Q. What procedure should be followed to compel a landlord to make essential repairs which he has refused to make?

A. Tenant should report this to the Area Rent Office.

EVICTION OF TENANTS

Evictions are controlled to some extent by the Emergency Price Control Act and the Rent Regulations. The Rent Regulations specify certain grounds on which a tenant may be evicted by action filed directly in the local court. In these cases the landlord is only required to give the tenant and the area office certain notices of the action. In other cases the landlord must obtain a certificate from the area office before he can bring an eviction action. This certificate is not an order for eviction of the tenant, but simply an authorization to the landlord to pursue his normal eviction remedies in the local court.

48. Q. Upon what grounds may a landlord evict his tenant by action filed directly in the local court?

A. There are various circumstances whereby a tenant may be so evicted. They are:

(1) If the tenant refuses to renew his lease upon the same terms and conditions as in his expiring lease. This is a ground for eviction only where the renewal lease is for a term
49 not longer than one year and contains no provisions contrary to the Rent Regulation.

(2) Where the tenant unreasonably refuses to allow his landlord access to the premises for the purpose of inspection or to show to a prospective purchaser. Such refusal is not a ground for eviction, however, if the inspection of the premises is contrary to the tenant's lease.

(3) Violation of a substantial obligation of his rental agreement, such as maintaining a fire hazard on the premises. However, the landlord must first give the tenant written notice to cease such violation.

(4) Committing a nuisance or using the dwelling unit for immoral or illegal purposes.

(5) Where the landlord wishes to do extensive remodeling or alteration which cannot be done while the tenant is occuping the property.

(6) When the landlord wants to use the dwelling for himself, provided he owned the property before rent control went into effect in the area. (However, where rent control went into effect before October 20, 1942, the landlord may not evict without securing a Certificate Relating to Eviction, unless he owned the property before October 20, 1942.)

(7) Where he fails to pay his legal rent.

(8) Where the tenant's lease has expired and at its expiration is subletting and is not occupying any portion of the dwelling himself.

49. Q. Must a landlord secure the permission of the Area Rent

Office in all cases of eviction before taking steps in a local court to evict a tenant?

A. For any other type of eviction except the eight listed above, he must secure permission from the Area Rent Office. However, the landlord must notify the Area Rent Office of all eviction actions.

50. Q. Can I purchase a home now occupied by a tenant and get possession of it for my own use?

A. The tenant in occupancy has certain rights under the Rent Regulation. Apply to your Area Rent Office for details.

51. Q. How long must a new purchaser wait before he can obtain possession of the property for his own occupancy—and is the tenant required to pay rent during that period? Also, are there any requirements as to the amount of the down payment?

A. In general, eviction is permitted only where the down payment is at least 20% of the purchase price and the buyer must wait three months from the date the eviction certificate is issued by the Area Rent Office unless:

(1) There are other similar premises into which the tenant can move without causing him a substantial hardship or loss.

(2) The owner had a real necessity requiring the sale such as a court's order to sell the property and reasonable sale could not be made without removal of the tenant.

If either of these circumstances is true, the Rent Director may issue an eviction certificate effective immediately.

The tenant must continue to pay rent to the purchaser during the three months waiting period.

52. My landlord has notified me to vacate. Can he force me to move out though I am unable to find living accommodations, and if so, how much notice am I entitled to?

A. The Rent Regulation may prevent your eviction unless the landlord has a clear right to evict you as explained in Questions 48 and 49. In any case, you would generally have ten days under the Rent Regulation in which to move and the local court, not the Area Rent Office, must order the eviction.

53. Q. My tenants are very undesirable and I consider them a nuisance. How can I evict them?

A. That is a matter for the local court to decide.

54. Q. Can a landlord evict if a tenant is a defense worker or if tenants are the family of a member of the armed forces?

A. Yes; if the landlord has a ground for eviction. The Rent Regulation makes no distinction between tenants, its provisions applying equally to all.

55. Q. Can a landlord re-rent accommodations after evicting a tenant?

A. Yes. However, if the landlord has evicted the tenant to occupy the property himself, he must file a report with the Area Rent Office before re-renting if he re-rents within six months.

56. Q. Can a landlord evict a tenant solely because the tenant refuses to pay more than the maximum rent?

A. No. This would be a violation of the Rent Regulation.

57. Q. If a tenant is behind in his rent but pays it immediately after he receives a notice of eviction, may the landlord proceed to evict him?

A. That is a matter for the local courts to decide.

58. Q. If we have rented or rent our farm tenant house to a war worker, can we get possession if we later need it for a farm tenant worker?

A. The answer depends upon the particular facts in every case. Before you could evict the tenant occupying the farm-tenant house you must petition the Area Rent Office for an eviction certificate.

52 HOTEL REGULATIONS

59. Q. Can I secure a room in a hotel on a monthly rate?

A. The answer depends upon the particular facts in every case. Generally, if the hotel regularly rented rooms on a monthly basis, it must continue to rent the same number of rooms on this basis. The Area Rent Office will be able to give you specific information on this.

60. Q. If I am a monthly guest in a hotel, can I be forced to vacate to make rooms available for transient guests?

A. If you are a monthly guest in a hotel, you may not be evicted to make the room available for transient guests.

61. Q. Must the operator of a rooming house, boarding house or hotel generally maintain a record of the amount charged for each unit within the structure?

A. Yes. The landlord must preserve for and make available to the Area Rent Office upon request all records relating to rent.

62. Q. Does the Hotel Regulation require a hotel to give any specific notice to a guest in order to evict him?

A. No. However, except in nonpayment of rent cases, the hotel must give the Area Rent Office a written notice at the time of commencing an eviction action.

PUBLIC AND PRIORITY HOUSING

63. Q. Is it true that various public housing and priority built homes are permitted to rent at a higher rate than comparable housing units that are privately owned?

A. Housing built with priorities costs more now and this is considered in fixing rents for such housing. However,
53 public housing is not permitted to rent at a higher rate than similar property was renting for on the maximum rent date. Rent increases are allowed in some low rent public housing projects because they were rented at a time when the tenant's income was unusually low, and the rent was subsidized by the government. Better employment opportunities now enable these tenants to pay higher rent and thus relieve the government of making up the difference.

REFUNDS

64. Q. If a tenant having paid in advance moves out during the middle of the month, is the landlord required to refund the unused portion of the rent?

A. This is a question to be determined in accordance with local law and is not a matter for the Area Rent Office to handle.

65. Q. I have overcharged my tenant for three months. Must I refund the overcharge?

A. Yes. Under the Emergency Price Control Act of 1942 tenants may sue in the local court for three times the overcharge.

66. Q. If Army personnel or defense workers subject to transfer at any time pay rent in advance, can they get a refund?

A. The answer is the same as to Question 64 above. This is a question to be determined in accordance with local law and is not a matter for the Area Rent Office to handle.

INCREASED COSTS

67. Q. Since the cost of maintenance, repairs, services, etc., are said to be much higher than when my rents were fixed, why can't I raise my rents to compensate this?

A. Comprehensive surveys show that most landlords have been able to hold down their actual expenditures through econo-
54 mies of wartime operation. Also the income from rental properties has increased because of higher occupancy. Comparatively few houses and apartments are vacant, and landlords are not losing as much money by failure to collect rents. As a result the great majority of landlords, OPA surveys show, have a larger income after meeting their operating expenses than in pre-rent control years.

HEAT

69. Q. If the landlord is obligated to furnish heat, what temperature must he maintain in winter and on what day must it begin?

A. The temperature and day the landlord must begin supplying heat to his tenant are to be determined in accordance with the local law or practice.

70. Q. My landlord furnished heat last winter. Now he refuses to do so. What can I do?

A. You should notify the Area Rent Office as this is a violation of the Rent Regulation.

71. Q. My landlord has installed a new heater to replace the defective heater. Can he increase my rent?

A. If the new heater is merely a replacement, the landlord would not be entitled to an increase in rent.

OTHER QUESTIONS

72. Q. Why can't the tenant appeal a Rent Director's decision just as a landlord can?

A. The Emergency Price Control Act and the rent regulations prohibit or require action only on the part of landlords and impose no restrictions upon tenants. Accordingly only landlords have been given a right of appeal.

73. Q. If the Area Rent Office denies a request for an increase in rent, how does the landlord get the case reopened?

55 A. The landlord may, within 60 days after an order has been issued denying his petition for an increase in rent, file with the Rent Director an "Application for Review," Form D-9. This application for review will be passed on by the Regional OPA Office.

74. Q. Do I have to pay the rent if the landlord won't give me a receipt?

A. No.

75. Q. My landlord hasn't called for the rent. What shall I do?

A. The Rent Regulation does not protect a tenant from eviction if he does not pay his landlord the rent when it is due. The manner in which it is paid is to be determined by the provisions of the tenant's lease or agreement or custom or provisions of local law.

76. Q. I want to rent out all the rooms in my apartment as sleeping rooms only. Can I do this?

A. Generally, if your apartment is vacant, you may rent out rooms for sleeping purposes only. However, you must register under the Hotel and Rooming House Regulation and you are subject to its provisions if you rent to more than two paying tenants.

77. Q. If the Rent Director grants me a rent increase when may I begin collecting it?

A. The landlord is permitted to collect the increase from the date of the Rent Director's order granting the increase.

78. Q. Do I have to refund to the tenant overcharges in rent received between the maximum rent date and the date the Rent Regulation went into effect?

A. No.

79. Q. If my tenant moves owing me rent, do you collect it for me?

56 A. No. This is not a matter for the Area Rent Office to handle.

80. Q. Can a landlord present an outgoing tenant with a bill for damages done by tenant?

A. This is not a matter for the Area Rent Office to handle.

Copies of the Rent Regulations referred to in this pamphlet may be obtained from your local Area Rent Office.

Defendant's Exhibit E

MINNEAPOLIS-HONEYWELL REGULATOR COMPANY

M H CONTROL SYSTEMS—BROWN INSTRUMENTS

1007 N. Meridian St.—Telephone Riley 4405—Indianapolis 4, Ind.

C. F. A. LOCKE, Branch Mgr.

JANUARY 23, 1945.

Mr. CHARLES W. STONE,
c/o W. H. Edgar and Son, Inc.,
110 Ottawa Street, Toledo, Ohio.

MY DEAR MR. STONE: This letter is to notify you of the cancellation of the limited agency contract between ourselves, dated July 28, 1944, and also to notify you of the cancellation of the contract dated July 29, 1944, together with the supplement thereto dated September 30, covering the loaning to each other of property now in each other's possession.

Very truly yours,

cfal/amm. (S) C. F. A. LOCKE.

57 *Defendant's Exhibit F*

OFFICE OF PRICE ADMINISTRATION, AREA RENT OFFICE

833 Washington Street

COLUMBUS, INDIANA

JUNE 11, 1945.

Mr. C. W. STONE,
P. O. Box 296, Toledo, Ohio.

DEAR SIR: This is with reference to the property you formerly owned at 148 W. Washington St., Mooresville, Ind., and which was occupied by one Mr. Charles W. Locke.

In January of this year we received from you, a letter with a contract attached regarding the rental agreement on this property, and we in turn mailed you copy of the Rent Regulations.

An investigation reveals that you have been collecting a cash rent of $75.00 per month for this house, and if this is true, you are required to register this property with the Area Rent Office. This should have been filed with this office within 30 days of first renting, so we must request that you file same within the next five days. Registration blank is attached.

Very truly yours,

(S) WILLIAM J. BOWMAN,
Area Rent Director.

58 *Defendant's Exhibit G*

OFFICE OF PRICE ADMINISTRATION

UNITED STATES OF AMERICA

AREA RENT OFFICE

633 Washington Street

COLUMBUS, INDIANA

NOTICE OF PROCEEDINGS BY RENT DIRECTOR

Concerning (Description of Accommodations): 148 West Washington Street, Mooresville, Indiana. Docket No. 20,691.

To (Name and Address of Landlord): Charles W. Stone, Box 296, Toledo, Ohio.

In accordance with Section 5 (d) of the Rent Regulation the Rent Director has after due consideration determined that the above described dwelling accommodations were "first rented" on August 1, 1944 to C. F. A. Locke and the Rent Director further finds that the rent on that date was $75.00 per month.

A preliminary investigation indicates that the maximum rent for the above described accommodations should be decreased on the ground stated in Section 5 (c) (1) of the Rent Regulation. Therefore, the Rent Director proposes to decrease the maximum rent from $75.00 per month to $45.00 per month effective August 1, 1944, the date of the first renting thereof, pursuant to Sections 4 (e) and 5 (c) (1). In the event you wish to file objections to the proposed action, such objections must be filed within five days from the date of this notice.

Written evidence supporting your objections must also be filed. Your objections and supporting evidence should be typed or legibly written. The address of the above housing accommoda-

tions and the docket number appearing on this notice should be placed on each document filed. If no objections and supporting evidence are filed within the above period, the
59 Rent Director may enter an order decreasing the maximum rent without further notice.

The landlord has failed to file a registration statement within the time specified in Section 4 (e) of the Regulation, and in such cases the Regulation provides that the order of the Rent Director under section 5 (c) (1) shall be effective to decrease the maximum rent from the date of such first renting or from the beginning of the first rental period on or after October 1, 1943, or the effective date of the Regulatjon, whichever is the later, unless the Administrator finds that the landlord was not at fault in failing to file a proper registration statement within the time specified.

The Rent Director further finds that the landlord was required by Section 7 to file a registration statement within thirty days from the time of the first renting. And alleges that he did not so register because he was advised by his attorney that "this loan would not conflict with the Rent Control laws" the Rent Director therefore finds that the evidence submitted by the landlord does not constitute sufficient evidence to establish that the landlord was not "at fault" within the meaning of Section 4 (e) for such failure so to file such registration statement.

June 21, 1945.

(S) WILLIAM J. BOWMAN,
Rent Director.

CC: William H. Henley, 227 West Main Street, Mooresville, Indiana.

60 *Defendant's Exhibit H*

JUNE 23, 1945.

MR. WM. J. BROWN,
Rent Director, Area Rent Office,
633 Washington St., Columbus, Indiana.

DEAR SIR:-Acknowledging receipt of your Notice of Proceedings by Rent Director, Docket No. 20691, concerning property formerly owned by me at 148 W. Washington St., Mooresville, Indiana, I hereby protest your action in this matter based on the following reasons:

1. This property has never been rented.
2. The use of the property in question was traded to Mr. Locke for the use of property at 2506 Scottwood, Toledo, Ohio.

This exchange, I do not believe, is in violation of any rent regulations. The Toledo Rent Office advised me, in August of last

year, that this exchange did not concern their office. I later mailed your office a copy of the contract between myself and Mr. Locke and your action in mailing me a copy of the Rent Regulations and not protesting at that time, I feel gave tentative approval. I would appreciate it if you could advise me just what part of the Rent Regulations was violated by this exchange.

If you must concern yourself with this contract, which we do not believe is under the jurisdiction of your office, please advise me how I can be reimbursed for my loss in the matter.

At the time the Lockes moved into the property I had an offer of $8,000 cash. The property was damaged and destroyed to such a great extent in a period of six months, that the same party who was then willing to give $8,500, would not purchase it at any price, and the house was sold for $7,000. Further the use of the property at Toledo, which I have received in return for mine at Mooresville is not as big a house, is not in as good repair,
61 the lot is approximately one-fourth the size, it does not have a swimming pool, it does not have summer cooling.

Please advise me further findings in this matter.

Very truly yours,

C. W. STONE.

CWS:IW.

In United States District Court

Memorandum opinion

Filed July 24, 1946

KLOEB, J.: This is a suit by the Administrator of the Office of Price Administration charging defendant with violations of the Emergency Price Control Act of 1942 as amended, and the Rent Regulation for Housing issued under the authority of the Act.

On August 1, 1944 defendant, for the first time, rented his house in Mooresville, Indiana but failed to file a registration statement with the Office of Price Administration as required by the Rent Regulation, 10 F. R. 3436. The house was rented up to and including April 1945 for $75.00 per month. After some correspondence between the parties the Office of Price Administration issued an order on OPA Form D 38 which provided in part "* * * it is ordered that the maximum rent for the above-described accommodations be, and it hereby is, changed from $75.00 per month to $45.00 per month * * * effective beginning from the date of such first renting * * *". On the bottom of the form was a rubber-stamp printed notice providing "The landlord shall refund to the tenant any rent received on or after the effective date of this order in excess of the maximum rent established herein

($45.00 per month) within 30 days after date of this order." No refund having been made by the defendant complaint was filed on February 1, 1946 praying for damages of $810.00,
62 treble the amount of the alleged overcharges for the nine months during which defendant rented the house.

The defendant claims that he did not rent his house and that the money he received from Mr. Locke (the occupant) was "the rent for premises at 2506 Scottwood Avenue, Toledo, Ohio—premises occupied by the defendant herein, under an agreement whereby Mr. Locke was to pay whatever rent was necessary for a residence for the defendant in the City of Toledo, Ohio, in exchange for immediate occupancy of the Charles Stone home at Mooresville, Indiana * * *". Defendant offered a written contract to prove the truth of this allegation.

As indicated at the trial such an arrangement appears to the Court to be merely a not too subtle subterfuge, and defendant must be held to have rented his property to Mr. Locke.

A more troublesome question is presented by the defense of the Statute of Limitations.

Section 4 (e) of the Rent Regulation for Housing as amended provides in part:

(e)—"* * * Within 30 days after so renting the landlord shall register the accommodations as provided in Section 7. The Administrator may order a decrease in the maximum rent as provided in Section 5 (c).

If the landlord fails to file a proper registration statement within the time specified (except where a registration statement was filed prior to October 1, 1943), the rent received for any rental period commencing on or after the date of the first renting or October 1, 1943, whichever is the later, shall be received subject to refund to the tenant of any amount in excess of the maximum rent which may later be fixed by an order under Section 5 (c) (1). Such amount shall be refunded to the tenant within 30 days after the date of issuance of the order."

Under the circumstances, therefore, there could be no violation of "* * * a regulation, order or price schedule prescribing a maximum price or maximum prices * * *". U. S. C. A. 50 App. 925 (e) since no such regulation or order
63 had been prescribed. And as plaintiff contends, after the Maximum Price Order here was prescribed under Sections 5 (c) (1) and 5 (d) of the Rent Regulation for Housing, Section 4 (e) of the same regulation, in effect, provides that the order prescribing the maximum price shall not be deemed violated prior to the expiration of the 30-day period after the date of the order. The Court agrees with plaintiff, therefore, that the violation of the order did not occur until July 30, 1945.

It does not follow, however, as plaintiff seems to contend, that the "* * * overcharge or overcharges upon which the action is based * * *". U. S. C. A. 50 App. 925 (e) occurred, therefore, on July 30, 1945. The defendant did not on July 30, 1945 make an overcharge of $270.00. U. S. C. A. 50 App. 925 (e) defines overcharges as "the amount by which the consideration exceeds the applicable maximum price * * *". The applicable maximum price as prescribed by the order of June 29, 1945 was $45.00 per month. The true situation, therefore, was that on June 29, 1945 the Office of Price Administration determined that the rent should have been $45.00 per month, thus determining that there had been an overcharge of $30.00 for each month. It is well settled that this Court has no jurisdiction to consider the validity of such an order.

It is upon overcharges of $30.00 per month that the action is based, not on a single overcharge of $270.00. Plaintiff is here seeking to recover damages under U. S. C. A. 50 App. 925 (e). That section "* * * establishes the sole means * * * whereby the Administrator on behalf of the United States may seek damages in the nature of penalty." Porter vs. Warner Holding Company, — U. S. —, slip sheet opinion dated June 3, 1946, 14 L. W. 4383. The evident plan of that section is to give a right to damages for each overcharge. Gilbert vs. Thierry, 58 F. Supp. 235 and authorities cited therein. The trouble with plaintiff's position is that it confuses the obligation of the landlord to refund, or make restitution, with the obligation to respond in damages. The former obligation exists only by virtue of Section 4 (e) of the
64 Rent Regulation for Housing. U. S. C. A. 50 App. 925 (e) imposes no obligation to refund or make restitution but only to respond in damages under certain conditions. It may well be that by virtue of the holding of the Supreme Court in Porter vs. Warner Holding Company, supra, plaintiff could enforce such a refund order by appropriate action under Section 925 (a). This action, however, is based on Section 925 (e) and "The time limitation expressed in 205 (e) 925 (e) operates as a limitation of the liability itself as created * * *". Bowles vs. American Distilling Company, 62 F. Supp. 20, 22. For this reason the Court has jurisdiction to award damages under Section 925 (e) only as to overcharges occurring one year prior to the filing of the action. Bowles vs. Gulf Refining Company, 61 F. Supp. 149; Bowles vs. American Distilling Company, supra; Thompson vs. Taylor, 62 F. Supp. 930. Plaintiff is entitled to recover, therefore, only for the three months of February, March, and April of 1945.

The Court finds that there was no wilful violation and no failure to take practicable precautions on the part of the defendant.

Judgment will accordingly be entered against the defendant in the sum of $90.00.

Plaintiff may have ten days in which to file Findings of Fact and Conclusions of Law in accordance with this opinion and the defendant may have ten days thereafter in which to file corrections or suggested additions thereto.

Toledo, Ohio, July 1946.

(S) FRANK L. KLOEB,
United States District Judge.

65 In United States District Court

Findings of fact and conclusions of law

Filed September 19, 1946

1. The plaintiff is the Administrator of the Office of Price Administration.

2. At all times pertinent hereto the defendant, Charles Stone, was the landlord of housing accommodations within the Columbus, Indiana, rental area, known and numbered as 148 West Washington Street, Mooresville, Indiana.

3. Pursuant to the provisions of Section 2 of the Emergency Price Control Act, as amended, 50 U. S. C. App. Section 902, the Price Administrator issued and there was published in the Federal Register "Rent Regulations for Housing" effective June 1, 1943 (8 F. R. 7322), hereinafter referred to as the "regulation," which regulation, as amended, has been at all times since the date of its issuance, in full force and effect. The regulation, as amended, established maximum rents for housing accommodations within the Columbus, Indiana, rental area.

4. Section 4 (e) of the Regulation provides that where property is rented for the first time after the effective date of the regulation,

(e)—"* * * .Within 30 days after so renting the landlord a shall register the accommodations as provided in Section 7. The Administrator may order a decrease in the maximum rent as provided in Section 5 (c).

"If the landlord fails to file a proper registration statement within the time specified (except where a registration statement was filed prior to October 1, 1943), the rent received for any rental period commencing on or after the date of the first renting or October 1, 1943, whichever is the later, shall be received subject to refund to the tenant of any "amount in excess of the maximum rent which may later be fixed by an order under Section 5 (c) (1). Such amount shall be refunded to the tenant within 30 days after the date of issuance of the order."

5. On August 1, 1944, the defendant, for the first time after the effective date of the Regulation, rented his house at Moores-
66 ville, Indiana, but failed to file a registration statement with the Office of Price Administration as required by the Regulation.

6. From August 1, 1944, through April 1945, the defendant demanded and received the sum of $75.00 per month as rental. On June 30, 1945, the Office of Price Administration issued an order, which provided in part:

"* * * it is ordered that the maximum rent for the above-described accommodations be, and it hereby is, changed from $75.00 per month to $45.00 per month * * * effective beginning from the date of such first renting * * *. The landlord shall refund to the tenant any rent received on or after the effective date of this order in excess of the maximum rent established herein ($45.00 per month) within 30 days after date of this order."

7. No refund having been made by the defendant pursuant to the order of the Office of Price Administration, this action was instituted on February 1, 1945, for damages in the sum of $810.00, treble the amount ordered refunded by the Office of Price Administration.

8. The defendant violated the order of the Office of Price Administration when he failed to refund to his tenant the excess of the rental received within 30 days after issuance of that order, viz. July 30, 1945.

9. The defendant was neither wilful nor did he fail to take practicable precautions.

Conclusions of law

1. The court has jurisdiction of the within proceedings pursuant to the provisions of Section 205 (c) and 205 (e) of the Emergency Price Control Act, 50 U. S. C. A. App. Section 901 et seq.

2. The court has jurisdiction over the parties hereto by virtue of Section 205 (c) of the Act.

3. The defendant, Charles Stone, has violated the provisions of Section 4 (a) of the Emergency Price Control Act of 1942,
67 as amended, and, more particularly, Section 4 (e) of the Rent Regulation for Housing; further, on July 30, defendant violated the order the Office of Price Administration issued on June 30, 1945, ordering the defendant to refund to his tenant all rental received from him in excess of the maximum fixed by the order.

4. This action is based on Section 205 (e) of the Act, 50 U. S. C. A. app. 925 (e), seeking treble damages for overcharges of $30.00 per month for a period of nine months as established by the order of June 30th.

5. By the one-year statute of limitations expressed in the Act, this court has jurisdiction to award damages under Section 925 (e) only for overcharges occurring within one year prior to the filing of this action.

6. The action of the defendant was neither wilful nor the result of failure to take practicable precautions.

7. The plaintiff is therefore entitled to recover damages for the three months of February, March, and April of 1945, and judgment is therefore entered in favor of the plaintiff against the defendant, Charles Stone, in the amount of $90.00, together with the costs of this proceeding.

(S) FRANK L. KLOEB,
United States District Judge.

In United States District Court

Judgment

Filed September 23, 1946

This cause having heretofore come on for hearing on the pleadings, stipulations and evidence, and the Court having filed its findings of fact and conclusions of law, finding, on the issues joined, for plaintiff, now

It is ordered that judgment in the sum of Ninety (90.00) Dollars be and it hereby is entered for plaintiff, together with costs of suit, for the collection of which execution is awarded.

(S) FRANK L. KLOEB,
United States District Judge.

68 In United States District Court

Notice of appeal

Filed December 20, 1946

Notice is hereby given that Philip B. Fleming, Administrator of the Office of Temporary Controls, the plaintiff above named, hereby appeals to the Circuit Court of Appeals for the Sixth Circuit from the following-described order of the Court, entered in this action on September 23, 1946:

"It is ordered that judgment in the sum of Ninety ($90.00) Dollars be and it hereby is entered for plaintiff, together with costs of suit for the collection of which execution is awarded."

(S) ALBERT M. DREYER,
Washington 25, D. C.,
(S) SAMUEL J. WEINER,
Cleveland, Ohio,
Attorneys for Appellant, Philip B. Fleming.

In United States District Court

Designation of record on appeal

Filed December 20, 1946

To the Clerk:

Please prepare transcript of record for the Circuit Court of Appeals in the above-entitled cause, and include therein the entire record and all the proceedings and evidence in the action, including, but not limited to, the following papers and orders:

1. Complaint.
2. Entry of appearance of Charles Stone as defendant.
3. Answer.
4. Plaintiff's Exhibits 1 to 6, inclusive.
5. Defendant's Exhibits A to H, inclusive.
6. Memorandum opinion of Judge Frank L. Kloeb, entered July 24, 1946.

69 7. Findings of fact and conclusions of law of Judge Frank L. Kloeb.

8. Order of the Court awarding judgment for plaintiff in the sum of Ninety ($90.00) Dollars, together with costs of suit, for the collection of which execution was awarded, entered September 23, 1946.
9. Notice of appeal.
10. Designation of record and acknowledgment of service thereon.
11. Reporter's transcript of all the proceedings and evidence in the above-entitled action.

DAVID LONDON,
Washington, D. C.,
ALBERT M. DREYER,
Washington, D. C.,
SAMUEL J. WEINER,
Cleveland, Ohio,
Counsel for Plaintiff-Appellant.

CERTIFICATE OF SERVICE

The undersigned, attorney for plaintiff-appellant in the above-entitled action, hereby certifies that he served the above Designation of Record upon Appeal for defendant-appellee, by mailing a copy of the within Designation of Record to the defendant and his attorney, Etheleen M. Stevens, at their last-known addresses.

(S) SAMUEL J. WEINER,
Attorney for Plaintiff-Appellant.

70 In United States District Court

Order substituting party plaintiff

Filed December 18, 1946

The application of Philip B. Fleming to be substituted as plaintiff herein having come on for hearing this 18th day of December, 1946, and it appearing to the court that said applicant is the duly appointed, qualified and acting Temporary Controls Administrator; that Paul A. Porter, the plaintiff herein, ceased to hold the office of Price Administrator, Office of Price Administration, on December 12, 1946; that by virtue of Executive Order 9809 (11 F. R. 14281), issue by the President of the United States on December 12, 1946, said applicant has been invested with all of the functions of the Price Administrator, Office of Price Administration, with full power and authority to continue and maintain in his name all civil proceedings heretofore instituted by the Price Administrator, and that there is substantial need for continuing and maintaining this action; that due notice of this application has been given to the defendant.

Now, therefore, it is hereby ordered that said applicant in his capacity of Administrator of the Office of Temporary Controls, be and is hereby substituted as party plaintiff herein in the place and stead of Paul A. Porter, Price Administrator of the Office of Price Administration.

(S) JONES, *Judge.*

71 [Clerk's certificate to foregoing transcript omitted in printing.]

72 In the United States Circuit Court of Appeals for the Sixth Circuit

Cause argued and submitted

June 5, 1947

Before HICKS, ALLEN, and MILLER, Circuit Judges

This cause is argued by Irving M. Gruber for Appellant and by Etheleen M. Stevens for Appellee and is submitted to the court.

In United States Circuit Court of Appeals

Judgment

Appeal from the District Court of the United States for the Northern District of Ohio.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Northern District of Ohio, and was argued by counsel.

On consideration whereof, It is now here ordered and
73 adjudged by this Court that the judgment of the said District Court in this cause be and the same is hereby affirmed.
74 [File endorsement omitted.]

In United States Circuit Court of Appeals for the Sixth Circuit

No. 10419

FRANK R. CREEDON, OFFICE OF HOUSING EXPEDITOR, APPELLANT

v.

CHARLES STONE, APPELLEE

Appeal from the United States District Court for the Northern District of Ohio

Opinion

Filed July 28, 1947

Before HICKS, ALLEN, and MILLER, Circuit Judges

ALLEN, Circuit Judge. This is an appeal by the Administrator of the Office of Temporary Controls from a decision of the District Court in an action to recover treble damages claimed to arise by reason of overcharges for rent made in violation of a regulation of the Administrator. The court rendered judgment in the amount of $90, one-third of the claimed overcharge, and refused damages by way of penalty.

The facts are not in controversy. On July 28, 1944, the appellee entered into an agreement with one C. F. Locke whereby Locke was made "an agent" for the appellee "to procure living accommodations in Toledo, Ohio." Locke succeeded in securing accommodations, and as a result, appellee moved from Mooresville, Indiana to Toledo, and Locke took over possession and occupancy of appellee's home at Mooresville. The first occupancy of the Mooresville house was on August 1, 1944, and a rent of $75 per month was charged through April, 1945.

The appellee inquired of the O. P. A. Regional Office in Toledo prior to the transaction described above as to whether it was permissible to trade houses, and was informed that no regulation existed covering trades. Claiming to believe that he and
75 Locke had effected a trade, although Locke did not own the Toledo property, appellee did not register the Mooresville

property with the O. P. A. January 16, 1945, appellee wrote the O. P. A. about the arrangement and enclosed a copy of the contract. The only response that appellee received was a booklet explaining the rent regulations.

An investigation was later conducted by the O. P. A. Area Rent Office, and on June 11, 1945, the Area Rent Director wrote the appellee, directing him to register the Mooresville property, which order was complied with. A hearing with reference to these matters was later held, as a result of which the Area Rent Director issued an order dated June 28, 1945, reducing the rent from $75 to $45 per month, effective from the date of the first rental, or from the beginning of the first rental period. This order decreasing the maximum rent also required the landlord, in accordance with § 4 (e) of the Rent Regulation for Housing, to refund to the tenant within thirty days after date of the order any rent received on or after the effective date of the order in excess of the maximum rent. No refund was made, and this action was instituted on February 1, 1946, asking judgment for $810 and costs, the aggregate amount of the monthly overcharges being $270.

The appellee urged below that the transaction was a trade, but this contention was correctly rejected by the court. The District Court found, however, that the arrangement was not a wilful violation of the regulations, and that the appellee did not fail to take practicable precautions under the statutes and the regulations, and accordingly refused damages over and above the overcharge. It further held that § 205 (e) of the Emergency Price Control Act as amended, 50 U. S. C., § 925 (e), printed in the margin,[1] required the court to award damages only for

[1] Section 205 (e):
If any person selling a commodity violates a regulation, order, or price schedule prescribing a maximum price or maximum prices, the person who buys such commodity for use or consumption other than in the course of trade or business may, within one year from the date of the occurrence of the violation, except as hereinafter provided, bring an action against the seller on account of the overcharge. In such action, the seller shall be liable for reasonable attorney's fees and costs as determined by the court, plus whichever of the following sums is the greater: (1) Such amount not more than three times the amount of the overcharge, or the overcharges, upon which the action is based as the court in its discretion may determine, or (2) an amount not less than $25 nor more than $50, as the court in its discretion may determine: Provided, however, That such amount shall be the amount of the overcharge or overcharges or $25, whichever is greater, if the defendant proves that the violation of the regulation, order, or price schedule in question was neither wilfull nor the result of failure to take practicable precautions against the occurrence of the violation. For the purposes of this section the payment or receipt of rent for defense-area housing accommodations shall be deemed the buying or selling of a commodity, as the case may be; and the word 'overcharge' shall mean the amount by which the consideration exceeds the applicable maximum price. If any person selling a commodity violates a regulation, order, or price schedule prescribing a maximum price or maximum prices, and the buyer either fails to institute an action under this subsection within thirty days from the date of the occurrence of the violation or is not entitled for any reason to bring the action, the Administrator may institute such action on behalf of the United States within such one-year period. If such action is instituted by the Administrator, the buyer shall thereafter be barred from bringing an action for the same violation or violations. Any action under this subsection by either the buyer or the Administrator, as the case may be, may be brought in any court of competent jurisdiction. A judgment in an action for damages under this subsection shall be a bar to the recovery under this subsection of any damages in any other action against the same seller on account of sales made to the same purchaser prior to the institution of the action in which such judgment was rendered.

76 overcharges occurring within one year prior to the filing of the action, which in this case would be for the months of February, March, and April, 1945.

The record clearly sustains the District Court's finding that appellee's violation was not wilful nor the result of failure to take practicable precautions to prevent its occurrence.

Section 205 (e) provides that judgment shall be "not more than three times the amount of the overcharge, or the overcharges, upon which the action is based as the court in its discretion may determine," and also provides that when the violation was neither wilful nor the result of failure to take practicable precautions, the amount of the judgment shall be "an amount of the overcharge or overcharges or $25, whichever is greater."

If the trial court had not made the finding with reference to lack of wilful violation and non-failure to take practicable precautions, within its discretion it could have entered judgment for the amount of the overcharge instead of for the treble amount and under this record it would not have abused its discretion. The finding was made, however, and as made required the District Court under § 205 (e) to give judgment only in the face amount of the overcharge. The finding is clearly supported by the efforts of the appellee to secure information from the O. P. A. office with reference to his real estate transaction. Query, whether the mailing of a booklet of 25 printed pages, without any specific answer or any indication of the particular paragraph deemed to be applicable, is a proper response to a letter addressed to a governmental bureau asking for information. The District Court did not err in concluding that appellee's failure to pick out the precise paragraph applicable to him and to proceed to register the property at that precise time, did not constitute wilfulness or

77 negligence. We find no error in the conclusion of the District Court upon this point.

The principal legal question presented is whether the one-year statute of limitations provided by the Act commences to run from the time of overcharge, as held by the District Court, or from the time of the failure to refund, as contended by the Administrator.

We think the judgment of the District Court is clearly correct. Section 205 (e) is "the sole means whereby individuals may assert their private right to damages and whereby the Administrator on behalf of the United States may seek damages in the nature of penalties." Porter v. Warner Holding Co., 328 U. S. 395, 401, 402.

Read in the ordinary sense, as applied to the payment of rent, § 205 (e) plainly provides that each separate overcharge is the violation referred to. Each separate overcharge is certainly a

violation of the regulation or order "prescribing a maximum price," and each separate overcharge gives rise to a cause of action for the violation. Gilbert v. Thierry, 58 Fed. Supp. 235 (D. C. Mass.), affirmed, Thierry v. Gilbert, 147 Fed. (2d) 603, 604 (C. C. A. 1). There is no merit in the contention that the violation upon which this cause of action is based is the failure or refusal to make the refund. Such a failure or refusal is a violation of § 4 (e) of the Rent Regulation for Housing, and if a refund order is issued by the Administrator, it is a violation of the order; but such failure or refusal is not the violation specified in § 205 (e), which is the violation of the "maximum price regulation" or order. To causes of action based on these overcharges, since they are violations under § 205 (e), the one-year statute of limitations applies.

The action was filed February 1, 1946, and recovery here, under the court's finding as to lack of wilfulness and negligence, was limited to overcharges occurring in the twelve months beginning February 1, 1945. But during this time overcharges were made only in three months, February, March, and April 1945, and the court properly entered judgment for $90, the aggregate amount of the overcharges for those three months. Since the overcharge for each month constituted a separate and distinct violation (Thierry v. Gilbert, supra), the Administrator was not authorized to cumulate the separate overcharges of the months preceding February 1, 1945, together with the succeeding months, into a total of $270, and recover for that amount.

The judgment of the District Court is affirmed.

78 [Clerk's certificate to foregoing transcript omitted in printing.]

79 Supreme Court of the United States

Order allowing certiorari

(Filed December 8, 1947)

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Sixth Circuit is granted, limited to the question as to the statute of limitations presented by the petition for the writ. The case is transferred to the summary docket.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

[Endorsement on cover:] File No. 52622. U. S. Circuit Court of Appeals, Sixth Circuit. Term No. 392. Frank R. Creedon, Housing Expediter, Office of the Housing Expediter, Petitioner vs. Charles Stone. Petition for writ of certiorari and exhibit thereto. Filed October 8, 1947. Term No. 392 O. T. 1947.

U. S. GOVERNMENT PRINTING OFFICE: 1947

FILE COPY

No. 392

In the Supreme Court of the United States

OCTOBER TERM, 1947

FRANK R. CREEDON, HOUSING EXPEDITER, OFFICE OF THE HOUSING EXPEDITER, PETITIONER

v.

CHARLES STONE

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

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CITATIONS

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In the Supreme Court of the United States

OCTOBER TERM, 1947

No. —

FRANK R. CREEDON, HOUSING EXPEDITER, OFFICE OF THE HOUSING EXPEDITER, PETITIONER

v.

CHARLES STONE

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

The Solicitor General, on behalf of Frank R. Creedon, Housing Expediter, Office of the Housing Expediter, petitioner herein, prays that a writ of certiorari issue to review the judgment of the United States Circuit Court of Appeals for the Sixth Circuit in the above entitled cause entered on July 28, 1947, affirming a decision of the United States District Court for the Northern District of Ohio.

OPINIONS BELOW

The opinion of the District Court (R. 61–64) is not yet reported. The opinion of the Circuit Court of Appeals (R. 72–76) is not yet reported.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered on July 28, 1947 (R. 72). The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Does the statute of limitations provided by Section 205 (e) of the Emergency Price Control Act, as amended, run from the time when a tenant pays rent to a landlord who has neglected to file a timely registration statement of his housing accommodations, or from the time that the landlord fails or refuses to obey a retroactive rent reduction order directing him to refund overcharges to the tenant?[1]

STATUTE AND REGULATION INVOLVED

The statute and regulation involved are the Emergency Price Control Act of 1942 (56 Stat. 23, 33; 50 U. S. C. App. 901 et seq., as amended by the Stabilization Extension Act of 1944, 58 Stat. 632, 640, 50 U.. S. C. App., Supp. V, 901, *et seq.*) and the Rent Regulation for Housing, as amended (8 F. R. 14663, 10 F. R. 3436). The perti-

[1] In case certiorari is granted, we shall also argue that the Court below erred in finding that a landlord who deliberately disobeys a rent reduction order under the circumstances of this case can be held to have proven that the violation was neither wilful nor the result of a failure to take practicable precautions.

nent provisions are set forth in Appendix A, *infra*, pp. 14–20.

STATEMENT

Respondent, Charles Stone, was the owner of a house situated at 148 West Washington Street, Mooresville, Indiana (R. 15). On or about August 1, 1944, respondent rented these premises to C. F. A. Locke for $75.00 per month (R. 7). This was the first rental of the premises (R. 9). Section 7 of the Rent Regulation for Housing (*infra*, pp. 19–20) required that a registration statement be filed with the Administrator within thirty days of such first rental; and Section 4 (e) (*infra*, pp. 17–18) provided that this first rental should constitute the prescribed maximum rent until reduced by the Administrator. The purpose of the registration statement is to put the Administrator promptly on notice of the rental of premises not previously rented and registered, and to give him an opportunity to review the rental to determine whether it is excessive. Section 4 (e) likewise provided that if the landlord fails to file a registration statement within such thirty-day period, any rent received from the time of the first renting should be subject to refund to the tenant of any amount in excess of the maximum rent which later might be established by an order issued under Section 5 (c) (1) (*infra*, pp. 18–19), and that such amount should be refunded to the tenant within thirty days after the date of issuance of such an order.

Section 5 (c) (1) authorized the decrease of maximum rents thus established where they were higher than those generally prevailing for comparable housing accommodations on the maximum rent date.

Instead of registering the premises within thirty days after August 1, 1944, as was required by the Regulation upon a first renting, respondent never filed a registration statement. In April 1945, respondent sold the premises to one Henley who, in June 1945, filed a registration statement (R. 10, 12, 21).

On June 28, 1945, the Area Rent Director, acting pursuant to authority vested in him by Section 5 (c) of the Regulation, reduced the rent from $75.00 to $45.00 per month, effective from the first rental, and ordered the respondent to refund the excessive amounts collected ($30.00 for each of nine months) within thirty days thereafter (R. 23–24). Respondent refused to obey this order. The tenant having failed to institute an action under Section 205 (e) of the Act, this suit was instituted by the Administrator on February 1, 1946, for $810.00, three times the $270.00 excessive rent which the respondent failed to refund (R. 2–3). After a trial, the court held that the one-year statute of limitations in Section 205 (e) of the Act barred that portion of the Administrator's claim which was based upon failure to refund excessive amounts collected more than a year before the institution of the action, and

awarded damages of $90.00 based only upon the single amount of the excess rent collected for the months of February, March, and April, 1945, which were within the year prior to the filing of the complaint (R. 63–64). The Circuit Court of Appeals affirmed the judgment (R. 72–76) likewise resting its decision on the ground that the statute of limitations ran from the various times when the landlord collected the rent from the tenant (R. 75), and that the violation was neither wilful nor the result of a failure to take practicable precautions (R. 74–75).

SPECIFICATION OF ERROR TO BE URGED

The Circuit Court of Appeals erred in holding that the statute of limitations provided by Section 205 (e) of the Emergency Price Control Act runs from the various times on which the landlord collected rent from the tenant, rather than from the date on which the landlord violated the retroactive rent reduction order by his failure to refund the excess rent.

REASONS FOR GRANTING THE WRIT

1. The decision of the court below is squarely in conflict with a subsequent decision of the Circuit Court of Appeals for the Fourth Circuit in *Creedon* v. *Babcock*, No. 5596, decided August 14, 1947, and printed in Appendix P pp. 21–29. In the instant case, the Sixth Circuit Court of Appeals held that "There is no merit in the contention that

the violation upon which this cause of action is based is the failure or refusal to make the refund" (R. 75). In *Creedon* v. *Babcock, supra,* however, where a retroactive rent order was also involved, the Fourth Circuit Court of Appeals ruled directly to the contrary, saying that "Until the last day on which refund could be made in compliance with the O. P. A. order, that is, 30 days after the order was issued, or January 30, 1945, there could be no violation. This must be so since a refund payment prior to that date would have been in full compliance with the order and hence would have given no foundation for suit." A petition for rehearing in the *Babcock* case, based upon the decision of the Sixth Circuit Court of Appeals in the instant case, was denied by the Fourth Circuit Court of Appeals on September 18, 1947.

2. The decision below involves a question of importance to the due administration and enforcement of the Emergency Price Control Act, as amended, and the Housing and Rent Act of 1947. Under Section 1 (b) of the Emergency Price Control Act of 1942, as amended, the provisions of that Act are to be treated as still remaining in force for the purpose of sustaining any suit with respect to offenses committed prior to the termination date of the Act.[3] Pur-

[3] See *Fleming* v. *Mohawk Wrecking & Lumber Co.*, 331 U. S. 111; *150 E. 47th Street Corp.* v. *Porter*, 156 F. 2d 541 (E. C. A.); *Korach Bros.* v. *Clark*, No. 332, decided July 11, 1947 (E. C. A.).

suant to that provision and the powers vested in him by Executive Order 9841, issued April 23, 1947, effective May 4, 1947 (12 F. R. 2645) and by the Housing and Rent Act of 1947 (Public Law 129, 80th Cong., 1st Sess.), the Housing Expediter is continuing the prosecution of thousands of actions for statutory damages arising out of rent violations committed prior to June 30, 1947, when the Emergency Price Control Act expired. In many hundreds of these cases, as is shown by the analysis below, liability is predicated on the refusal of landlords to obey retroactive orders reducing rents and directing refunds of overcharges to tenants, and a large proportion of these cases would be barred by the period of limitation as construed by the court below.[3]

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[3] A search of the records of the Office of the Housing Expediter shows that there are now pending 1,320 cases involving retroactive rent orders. A list of these cases is in the possession of the Solicitor General. In the Cleveland region of the Office of the Housing Expediter, which is roughly coterminous with the region covered by the Sixth Circuit (the Office of the Housing Expediter region includes Michigan, Ohio, Kentucky, Indiana, and West Virginia; the Sixth Circuit, Michigan, Ohio, Kentucky, and Tennessee) there are 141 such cases. In 69 of these, part or all of the action would be barred by the statute of limitations if the decision in the instant case were to stand. Thus, it may be assumed from this sampling that about 650 pending cases throughout the country depend on the determination of the question involved herein.

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Under similar circumstances, retroactive rent reduction orders have been and are still being issued by the Office of the Housing Expediter.[4] If the decision of the Sixth Circuit Court of Appeals is allowed to stand, it would mean that many, if not most, of these actions would be barred in whole or in part by that court's construction of Section 205 (e).

3. a. The plain words of the Act reject the conclusion reached by the court below that the statute of limitations runs from the time that rent is paid rather than from the time the landlord has refused to obey the order to refund.

Section 205 (e) provides in part:

> If any person selling a commodity violates a regulation, * * * prescribing a maximum price or maximum prices, the person who buys such commodity for use or consumption other than in the course of trade or business may, within one year from the date of the occurrence of the *violation*, except as hereinafter provided, bring an action against the seller on account of the overcharge. * * * For the purposes of this section the payment or receipt of rent for defense-area housing accommodations

[4] The Controlled Housing Rent Regulation (12 F. R. 4331), issued under the Housing and Rent Act of 1947 (Public Law 129, 80th Cong., 1st sess.) contains provisions (Sec. 4 (c) and 5 (c)) with regard to the registration of premises and the issuance of retroactive refund orders which are substantially the same as those in the former Regulation involved in this case.

> shall be deemed the buying or selling of a commodity, as the case may be; and the word "overcharge" shall mean the amount by which the consideration exceeds the applicable maximum price. If any person selling a commodity violates a regulation * * * prescribing a maximum price or maximum prices, and the buyer either fails to institute an action under the subsection within thirty days from the date of the *occurrence* of the *violation* or is not entitled for any reason to bring the action, the Administrator may institute such action on behalf of the United States within such one-year period. If such action is instituted by the Administrator, the buyer shall thereafter be barred from bringing an action for the same *violation* or *violations*. * * * [Italics added.]

In applying Section 205 (e) to the instant case, the court below said (R. 75): "There is no merit in the contention that the violation upon which this cause of action is based is the failure or refusal to make the refund. Such a failure or refusal is a violation of § 4 (e) of the Rent Regulation for Housing, and if a refund order is issued by the Administrator, it is a violation of the order; but such failure or refusal is not the violation specified in § 205 (e), which is the violation of the 'maximum price regulation' or order." This construction is erroneous, since Section 205 (e) clearly gives a course of action to a tenant or to the Administrator for a *violation* of a regulation

or order prescribing a maximum rent *resulting in an overcharge.* If respondent had refunded the excess payments to the tenant, as the order directed, at any time prior to July 29, 1945, there would have been no violation, and no foundation for suit. Hence, since no cause of action accrued until July 29, 1945, it was not possible for the statute of limitations to begin running at an earlier date.

While the landlord's failure to file a timely registration statement for the premises in question violated Section 7 of the Rent Regulation for Housing, such violation did not result in an overcharge to the tenant. At that point, pursuant to Section 4 (c) of the Regulation, the legal maximum rent was still the first rent charged, i. e., $75.00 per month, subject to modification by the Area Rent Director upon the filing of a registration statement. Not until the Rent Director issued his order of June 28, 1945, reducing the rent retroactively from $75.00 to $45.00 per month, did there exist an order prescribing a maximum rent for the premises involved which the respondent violated with a resulting overcharge. The precise time of violation was July 29, 1945, the day after the last day allowed him for refund of the rent overcharges. This is the respondent's only violation of an order establishing a maximum rent for which Section 205 (e) of the Act gives a cause of action. At that point, both violation and overcharge occurred. Until July 29, 1945, neither the tenant nor

the Price Administrator had any cause of action against the respondent based upon such overcharges. Prior to the Rent Director's order establishing retroactively a reduced maximum rent, neither the tenant nor the Administrator could bring an action for overcharges because such overcharges had not occurred.

Thus, the decision of the Circuit Court of Appeals holds in effect that the one-year period of limitation prescribed by Section 205 (e) commences to run before the cause of action given to the tenant, and alternatively to the Price Administrator, comes into existence.[5] Such an interpretation of Section 205 (e) is clearly erroneous, in that it disregards the established rule that a statute of limitations commences to run only when a cause of action has accrued so that suit may be instituted upon it.[6] The clear purpose of that

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[5] The lower court relies on *Thierry* v. *Gilbert*, 147 F. 2d 603 (C. C. A. 1). But in that case, at the time the landlord collected the rent, the lawful maximum rent for the premises had already been fixed by the Rent Regulation at the rent charged on the maximum rent date. Thus, the collection of excessive rent was a violation of the Rent Regulation which would start the running of the period of limitation.

[6] In an analogous situation, this Court has held that statutes of limitation commence to run on a receiver's cause of action to collect an assessment from the stockholders of an insolvent national bank only from the last day allowed by the Comptroller of the Currency for payment of the assessment as determined by him. *Rawlings* v. *Ray*, 312 U. S. 96; *Fisher* v. *Whiton*, 317 U. S. 217; *Cope* v. *Anderson*, No. 593, last Term, decided June 2, 1947.

section is fulfilled only by construing it literally and logically to mean that under circumstances such as these, the cause of action for damages accrues and the statute of limitations commences to run on the date when the landlord is first in violation of a rent order which establishes the existence of overcharges.

b. In addition, the conclusion reached by the Sixth Circuit is at odds with the established principle that a wrongdoer may not benefit from his own wrong (see, e. g. *Bigelow* v. *RKO Radio Pictures, Inc.*, 327 U. S. 251; *R. H. Stearns Co.* v. *United States*, 291 U. S. 54). The retroactive rent reduction order, which must be accepted as valid in these proceedings,[7] is issued only where a landlord has failed to file a timely registration statement.[8] By his delay, the fact of renting is concealed from the Administrator and investigation of the premises for review of the maximum rental is postponed. To prevent the landlord from benefiting from his own complete disregard of the Act and the Rent Regulation, the

[7] *Bowles* v. *Willingham*, 321 U. S. 503; *Porter* v. *McRae*, 155 F. 2d 213 (C. C. A. 10); *Bowles* v. *Lake Lucerne Plaza*, 148 F. 2d 967 (C. C. A. 5), certiorari denied, 326 U. S. 726; *Fleming* v. *Dashiel*, 161 F. 2d 612 (C. C. A. 9).

[8] See Section 4 (e) of the Rent Regulation for Housing; cf. *Porter* v. *Senderowitz*, 158 F. 2d 435 (C. C. A. 3), certiorari denied, 330 U. S. 848; *Porter* v. *Kramer*, 156 F. 2d 687 (C. C. A. 8); *Martini* v. *Porter*, 157 F. 2d 35 (C. C. A. 9), certiorari denied, 330 U. S. 848; *Porter* v. *Eastern Sugar Associates*, 159 F. 2d 299 (C. C. A. 4).

retroactive order requires him to refund to the tenant all overcharges collected during the period of noncompliance. On the theory upheld by the Sixth Circuit, however, the longer the delay or "* * * the more grievous the wrong done, the less likelihood there would be of recovery." *Bigelow* v. *RKO Radio Pictures, Inc.*, *supra*, p. 265. To allow hundreds of landlords to escape liability under the Emergency Price Control Act and under the Housing and Rent Act of 1947 because of their own inaction or wilful concealment is bound not only to invite disregard of the provisions of the Housing and Rent Act of 1947, but also to breed contempt for law generally.

CONCLUSION

The decision of the court below is in conflict with a decision of another Circuit Court of Appeals. It decides a question of importance to the enforcement and administration of the Emergency Price Control Act and the Housing and Rent Act of 1947. It is clearly wrong. For these reasons, a writ of certiorari should be granted.

Respectfully submitted.

PHILIP B. PERLMAN,
Solicitor General.

OCTOBER 1947.

APPENDIX A

1. Pertinent Provisions of Emergency Price Control Act of 1942 (56 Stat. 23), as amended by Stabilization Extension Act of 1944 (58 Stat. 632, 50 U. S. C. App., Supp. V, Sec. 901, *et seq.*):

SEC. 4. (a) It shall be unlawful, regardless of any contract, agreement, lease, or other obligation heretofore or hereafter entered into, for any person to sell or deliver any commodity, or in the course of trade or business to buy or receive any commodity, or to demand or receive any rent for any defense-area housing accommodations, or otherwise to do or omit to do any act, in violation of any regulation or order under section 2, or of any price schedule effective in accordance with the provisions of section 206, or of any regulation, order, or requirement under section 202 (b) or section 205 (f), or to offer, solicit, attempt, or agree to do any of the foregoing.

Sec. 205 (e) If any person selling a commodity violates a regulation, order, or price schedule prescribing a maximum price or maximum prices, the person who buys such commodity for use or consumption other than in the course of trade or business may, *within one year from the date of the occurrence of the violation, except as hereinafter provided, bring an action against the seller on account of the overcharge. In such action, the seller shall be liable for reasonable attorney's fees and costs as determined by the court, plus whichever of the following sums is the greater: (1)*

Such amount not more than three times the amount of the overcharge, or the overcharges, upon which the action is based as the court in its discretion may determine, or (2) an amount not less than $25 nor more than $50, as the court in its discretion may determine: Provided, however, That such amount shall be the amount of the overcharge or overcharges or $25, whichever is greater, if the defendant proves that the violation of the regulation, order, or price schedule in question was neither wilfull nor the result of failure to take practicable precautions against the occurrence of the violation.[1] For the purposes of this section the payment or receipt of rent for defense-area housing accommodations shall be deemed the buying or selling of a commodity, as the case may be; *and the word "overcharge" shall mean the amount by which the consideration exceeds the applicable maximum price.*[2] If any person selling a commodity violates a regulation, order, or price schedule prescribing a maximum price or maximum prices, and the buyer *either fails to institute an action under this subsection within thirty days from the date of the occurrence of the violation or is not entitled for any reason to bring the action, the Administrator may institute such action on behalf of the United States within such*

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[1]As amended by Sec. 108 (b) of Stabilization Extension Act of 1944. Formerly read, in place of italicized language: "* * * bring an action either for $50 or for treble the amount by which the consideration exceeded the applicable maximum price, whichever is the greater, plus reasonable attorney's fees and costs as determined by the court."

[2]Added by Sec. 108 (b) of Stabilization Extension Act of 1944.

one-year period.[3] *If such action is instituted by the Administrator, the buyer shall thereafter be barred from bringing an action for the same violation or violations. Any action under this subsection by either the buyer or the Administrator, as the case may be, may be brought in any court of competent jurisdiction. A judgment in an action for damages under this subsection shall be a bar to the recovery under this subsection of any damages in any other action against the same seller on account of sales made to the same purchaser prior to the institution of the action in which such judgment was rendered.*

2. Pertinent Provisions of the Rent Regulation for Housing, as amended (8 F. R. 14663, 10 F. R. 3436):

Section 2. *Prohibition against higher than maximum rents*—(a) *General prohibition.* Regardless of any contract, agreement, lease, or other obligation heretofore or hereafter entered into, no person shall demand or receive any rent for or in connection with the use or occupancy on and after the effective date of regulation of any housing accommodations within the Defense-Rental Area higher than the maximum rents provided by this regulation; and no person shall offer, solicit, attempt, or agree to do any of

[3] As amended by Sec. 108 (b) of Stabilization Extension Act of 1944. Formerly read, in place of italicized language: "* * * is not entitled to bring suit or action under this subsection, the Administrator may bring such action under this subsection on behalf of the United States. Any suit or action under this subsection may be brought in any court of competent jurisdiction, and shall be instituted within one year after delivery is completed or rent is paid. * * *"

the foregoing. Lower rents than those provided by this regulation may be demanded or received.

* * * * *

Section 4. *Maximum rents.* Maximum rents (unless and until changed by the Administrator as provided in section 5, shall be:

(a) *Rented on maximum rent date.* For housing accommodations rented on the maximum rent date, the rent for such accommodations on that date.

* * * * *

(e) *First rent after effective date.* For (1) newly constructed housing accommodations without priority rating first rented on or after the effective date of regulation, or (2) housing accommodations changed on or after such effective date so as to result in an increase or decrease of the number of dwelling units in such housing accommodations, or (3) housing accommodations not rented at any time during the two months ending on the maximum rent date nor between that date and the effective date, the first rent for such accommodations after the change or effective date, as the case may be, but in no event more than the maximum rent provided for such accommodations by any order of the Administrator issued prior to September 22, 1942. Within 30 days after so renting the landlord shall register the accommodations as provided in section 7. The Administrator may order a decrease in the maximum rent as provided in section 5 (c).

If the landlord fails to file a proper registration statement within the time specified (except where a registration statement was filed prior to

October 1, 1943) the rent received for any rental period commencing on or after the date of the first renting or October 1, 1943, whichever is the later, shall be received subject to refund to the tenant of any amount in excess of the maximum rent which may later be fixed by an order under section 5 (c) (1). Such amount shall be refunded to the tenant within 30 days after the date of issuance of the order. If the Administrator finds that the landlord was not at fault in failing to file a proper registration statement within the time specified, the order under section 5 (c) (1) may relieve the landlord of the duty to refund. Where a proper registration statement was filed before March 1, 1945, the landlord shall have the duty to refund only if the order under section 5 (c) (1) is issued in a proceeding commenced by the Administrator before September 1, 1945. Where a proper registration statement is filed on or after March 1, 1945, the landlord shall have the duty to refund only if the order under section 5 (c) (1) is issued in a proceeding commenced by the Administrator within three months after the date of filing of such registration statement. The foregoing provisions and any refund thereunder do not affect any civil or criminal liability provided by the Act for failure to file the registration statement required by section 7.

* * * * *

Section 5. *Adjustments and other determinations.* In the circumstances enumerated in this section, the Administrator may issue an order changing the maximum rents otherwise allowable or the minimum services required.

* * * * *

(c) *Grounds for decrease of maximum rent.* The Administrator at any time, on his own initiative or on application of the tenant, may order a decrease of the maximum rent otherwise allowable only on the grounds that:

(1) *Rent higher than rents generally prevailing.* The maximum rent for housing accommodations under paragraph (c), (d), (e), (g), or (j) of section 4 is higher than the rent generally prevailing in the Defense-Rental Area for comparable housing accommodations on the maximum rent date.

* * * * *

Section 7. *Registration*—(a) *Registration statement.* On or before the date specified in Schedule A of this regulation, or within 30 days after the property is first rented, whichever date is the later, every landlord of housing accommodations rented or offered for rent shall file in triplicate a written statement on the form provided therefor to be known as a registration statement. The statement shall identify each dwelling unit and specify the maximum rent provided by this regulation for such dwelling unit and shall contain such other information as the Administrator shall require. The original shall remain on file with the Administrator and he shall cause one copy to be delivered to the tenant and one copy, stamped to indicate that it is a correct copy of the original, to be returned to the landlord. In any subsequent change of tenancy the landlord shall exhibit to the new tenant his stamped copy of the registration statement, and shall obtain the tenant's signature and the date thereof, on the back of such statement. Within five days after renting to a new

tenant, the landlord shall file a notice on the form provided therefor, on which he shall obtain the tenant's signature, stating that there has been a change in tenancy, that the stamped copy of the registration statement has been exhibited to the new tenant and that the rent for such accommodations is in conformity therewith.

When the maximum rent is changed by order of the Administrator, the landlord shall deliver his stamped copy of the registration statement to the area rent office for appropriate action reflecting such change.

Section 9.[4] *Evasion*—(a) *General.* The maximum rents and other requirements provided in this regulation shall not be evaded, either directly or indirectly, in connection with the renting or leasing or the transfer of a lease of housing accommodations, by way of absolute or conditional sale, sale with purchase money or other form of mortgage, or sale with option to repurchase, or by modification of the practices relating to payment of commissions or other charges or by modification of the services furnished with housing accommodations, or by tying agreement, or otherwise.

(b) *Purchase of property as condition of renting.* Specifically, but without limitation on the foregoing, no person shall require a tenant or prospective tenant to purchase or agree to purchase furniture or any other property as a condition of renting housing accommodations.

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[4] As amended by Am. 44, 10 F. R. 330, effective January 10, 1945, which added paragraph (b) and inserted "or by tying agreement" in paragraph (a).

APPENDIX B

United States Circuit Court of Appeals
Fourth Circuit

No. 5596

FRANK R. CREEDON, HOUSING EXPEDITER, OFFICE OF THE HOUSING EXPEDITER, APPELLANT

v.

E. PAULINE BABCOCK, APPELLEE

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES, FOR THE DISTRICT OF MARYLAND, AT BALTIMORE

(Argued June 19, 1947. Decided August 14, 1947.)

Before PARKER, SOPER, and DOBIE, Circuit Judges

DOBIE, *Circuit Judge:*

This is an appeal by the successor to the Price Administrator (hereinafter referred to as O. P. A.) from a judgment of the United States District Court for the District of Maryland, dismissing (except to a limited extent) an action for statutory damages instituted pursuant to Section 205 (e) and Section 205 (a) of the Emergency Price Control Act of 1942, as amended (50 U. S. C. A. App. Sec. 925 (e), (a)) (hereinafter referred to as the Act), for alleged violations of the Rent Regulation for Housing, 7 F. R. 4902, 8 F. R. 7322, as amended 8 F. R. 9020, 9 F. R. 11335, 10 F. R. 2401 (hereinafter referred to as the Regulation). The principal issue on this appeal was raised when Babcock, defendant and appellee, made a motion to dismiss on the grounds that the

statute of limitations barred the suit. The opinion of the lower court may be found in 65 F. Supp. 380.

The material facts are not disputed and may be summarized by a brief chronology. Babcock, owner of a basement apartment, changed the apartment from an unfurnished to a furnished apartment, and rented it as a furnished apartment for the first time on December 14, 1943, fixing a new rental of $100.00 per month. At that time the controlling Regulation provided:

> *Maximum rents.*—Maximum rents (unless and until changed by the Administrator as provided in section 5) shall be:
> * * *
>
> (j) *Changed on or after July 1, 1943, or the effective date of regulation, whichever is the later, from unfurnished to furnished.* For housing accommodations changed on or after July 1, 1943, or the effective date of regulation, whichever is the later, from unfurnished to fully furnished, the first rent for such accommodations after such change. The Administrator may order a decrease in the maximum rent as provided in section 5 (c) (1).
>
> Within 30 days after the accommodations are first rented fully furnished, the landlord shall register the accommodations as provided in section 7. If the landlord fails to file a registration statement within the time specified, the rent received from the time of such first renting shall be received subject to refund to the tenant of any amount in excess of the maximum rent which may later be fixed by an order under section 5 (c) (1). In such case, the order under section 5 (c) (1) shall be effective to decrease the maximum rent from the time

> of such first renting. The foregoing provisions and any refund thereunder do not affect any civil or criminal liability provided by the act for failure to file the registration statement required by section 7. 8 F. R. 9020, 9 F. R. 11336–7.

Instead of registering the premises within 30 days of December 14, 1943, as required by the Regulation quoted, Babcock delayed 10 months before registering on October 14, 1944.

On November 25, 1944, the Area Rent Director, O. P. A., pursuant to authority contained in Section 5 (c) of the Regulation, reduced the maximum rent for the furnished apartment to $72.50 per month, effective beginning with "the next regular rent-payment period."

Shortly thereafter O. P. A. notified Babcock that the order would be modified so as to make the reduction in rent retroactive to December 14, 1943 (the first day the apartment was rented furnished). Babcock did not exercise her right, stated in the Notice, to file objection to this proposed modification. Accordingly, on December 30, 1944, a new order was issued, changing the order of November 25, 1944, by making the effective date of the order relate back to the date the apartment was rented furnished. This order also provided:

> All rent received by you since the effective date of this order, in excess of the maximum legal rent established hereby, namely $72.50 per mo., is subject to refund to the tenant. Upon your failure to make such refund within 30 days from the date hereof, the excess payment received will be considered an overcharge within the mean-

ing of Section 205 (e) of the Emergency Price Control Act of 1942, as amended, subjecting you to a damage action in accordance with that section.

Babcock refused to comply with this order of December 30, 1944, directing her to refund the overcharges. The tenant failed to sue and O. P. A. filed a complaint for treble damages. This complaint was filed on September 6, 1945.

Whether there is a statutory limitation barring this suit hinges upon the construction to be given Section 205 (e) of the Act. This Section provides:

> If any person selling a commodity violates a regulation, order, or price schedule prescribing a maximum price or maximum prices, the person who buys such commodity for use or consumption other than in the course of trade or business may, within one year from the date of the occurrence of the *violation*, except as hereinafter provided, bring an action against the seller on account of the *overcharge*. * * * For the purposes of this section the payment or receipt of rent for defense-area housing accommodations shall be deemed the buying or selling of a commodity, as the case may be; and the word "overcharge" shall mean the amount by which the consideration exceeds the applicable maximum price. If any person selling a commodity violates a regulation, order, or price schedule prescribing a maximum price or maximum prices, and the buyer either fails to institute an action under the subsection within thirty days from the date of the *occurrence* of the *violation* or is not entitled for any reason to bring the action, the Administra-

> tor may institute such action on behalf of the United States within such one-year period. If such action is instituted by the Administrator, the buyer shall thereafter be barred from bringing an action for the same *violation* or *violations*. * * * The amendment made by subsection (b) insofar as it relates to actions by buyers or actions which may be brought by the Administrator only after the buyer has failed to institute an action within thirty days from the occurrence of the violation, shall be applicable only with respect to violations occurring after the date of enactment of this Act. * * * [Italics added.]

It should be noted at the outset that the validity of the order of December 30, 1944, is not before us since that question could not be raised in the court below. *Bowles* v. *Meyers,* 149 F. (2d) 440; *Porter* v. *Eastern Sugar Associates,* 159 F. (2d) 299.

Failure to register gave no right to sue and therefore does not govern the limitation period. Compare *Rawlings* v. *Ray,* 312 U. S. 96. Until the last day on which refund could be made in compliance with the O. P. A. order, that is, 30 days after the order was issued, or January 30, 1945, there could be no violation. This must be so since a refund payment prior to that date would have been in full compliance with the order and hence would have given no foundation for suit. It follows necessarily from the plain and imperative words of the Act—"within one year from the date of the occurrence of the violation"—that the limitation period started the day following January 30, 1945, which was the date of the occurrence of the violation. The lower court so

ruled as to the date of the occurrence of the violation. *Bowles* v. *Babcock,* 65 F. Supp. 380, 384, and this is in accord with the weight of authority. *Porter* v. *Butts,* 68 F. Supp. 516; *Haber* v. *Garthly,* 67 F. Supp. 774; *Porter* v. *Sandberg,* 69 F. Supp. 29; *Parham* v. *Clark,* 68 F. Supp. 17; *Fleming* v. *Schleicher,* U. S. District Court for the District of Maryland, June 4, 1947. But compare *Thompson* v. *Taylor,* 62 F. Supp. 930.

The court below reasoned further, however, that recovery was limited to the period from September 6, 1944 (one year prior to the date of the complaint) to November 11, 1944 (the date Babcock reduced the rent to $72.50). To limit recovery from September 6, 1944, correlates the limitation period of the Act to the time when the overcharges were received. In other words, by treating the *violation* as synonymous with and the overcharge period coeval. This, we think, is an erroneous construction of the Act.

It becomes apparent, upon a close reading of the Act, that the word *violation* is used in a sense that is quite separate and distinct from the word *overcharge.* Particularly significant is the first sentence of Section 205 (e) quoted above: "If any person selling a commodity violates a * * * order * * * prescribing a maximum price * * * the person who buys such commodity * * * may, within one year from the date of the occurrence of the *violation* * * * bring an action against the seller on account of the *overcharge* * * *." *Violation* is used to indicate the point from which the statute

begins to run, whereas *overcharge* indicates the basis of, and the yardstick for, damages.

Appellee challenges this construction by pointing to the history of the Act. It is quite true that Section 205 (e) provided before amendment that suit should be brought within one year after the "rent is paid." That language, of course, favored the defendant in a suit of this sort. Next, the contention is made that there was never any intention on the part of the Congress to tamper with the provisions relating to the limitation period because the legislative committee reports disclose no such intention. See Report of the Senate Committee on Banking and Currency, Sen. Rep. No. 922, 78th Congress, 2d Session, p. 13. The committee reports appear to be entirely silent on this subject. But however persuasive this line of reasoning might be in some situations, it cannot prevail here for it ignores a cardinal rule of statutory construction. There is little or no place for extrinsic aids when a statute employs words that are made plain by the very terms of the statute. *Caminetti* v. *United States*, 242 U. S. 470. Surely such subjective and nebulous conclusions as might arise from the silence of a committee report must yield to the literal but clear words on the face of the statute. Especially is this true when the result thereby reached is practical. We think the language of the Act makes a clear distinction between *violation* and *overcharge*. We conclude, therefore, that none of the claim here involved is barred by the statute of limitations. This conclusion fully accords with the generally established rule that

a limitation period begins to run only *after* the accrual of the right to prosecute a claim or cause of action. 34 Am. Jur. (Limitation of Action) § 113. There was no such right here until the "occurrence of the violation," and that, as we have pointed out, did not come into being until Babcock refused to comply with the order of December 30, 1944.

Question has also been raised of the lower court's ruling that Babcock was not liable for treble damages. An amendment to Section 205 (e) of the Act provides that treble damages are not to be assessed "if the defendant *proves* that the violation of the regulation, order, or price schedule in question was neither wilful nor the result of failure to take practicable precautions against the occurrence of the violation." [Italics ours.] We find nothing in the recitation of facts in the complaint from which it could be said as a matter of law that Babcock was entitled to this so-called Chandler defense against treble damages. No evidence was taken below and the case went off on a motion to dismiss. We conclude, therefore, that the lower court was in error in ruling on the question without some kind of hearing. It may be that upon such hearing the facts set forth in the complaint together with evidence of lack of intent to violate the act and evidence of reasonable care in the premises may justify a finding of defendant's right to relief under the "Chandler defense"; but this is a matter to be determined upon the proofs in the further hearing of the case. It should be noted, also, that

whether triple damages are to be assessed is left to the discretion of the trial judge, the language of the statute with regard thereto being "such amount *not more than three times* the amount of the overcharge, or the overcharges, upon which the action is based as the court *in its discretion* may determine." [Italics ours.]

The judgment appealed from is reversed and the cause remanded to the District Court for further proceedings in accordance with this opinion.

Reversed and Remanded.

U. S. GOVERNMENT PRINTING OFFICE: 1947

FILE COPY

No. 892

In the Supreme Court of the United States

OCTOBER TERM, 1947

TIGHE E. WOODS, HOUSING EXPEDITOR, OFFICE OF THE HOUSING EXPEDITOR, PETITIONER

v.

CHARLES STORY

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE RESPONDENT

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773436—48——1

In the Supreme Court of the United States

OCTOBER TERM, 1947

No. 392

TIGHE E. WOODS, HOUSING EXPEDITER, OFFICE OF THE HOUSING EXPEDITER, PETITIONER

v.

CHARLES STONE

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE PETITIONER

OPINIONS BELOW

The opinion of the district court (R. 41–44) is not reported. The opinion of the circuit court of appeals (R. 49–52) is reported in 163 F. 2d 393.

JURISDICTION

The judgment of the circuit court of appeals was entered on July 28, 1947 (R. 48–49). The petition for a writ of certiorari was filed on October 8, 1947, and was granted on December 8, 1947 (R. 52). The jurisdiction of this Court rests on

Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Does the statute of limitations provided by Section 205 (e) of the Emergency Price Control Act, as amended, run from the time when a tenant pays rent to a landlord who has neglected to file a timely registration statement of his housing accommodations, or from the time that the landlord fails or refuses to obey a retroactive rent reduction order directing him to refund overcharges to the tenant?

STATUTE AND REGULATION INVOLVED

The statute and regulation involved are the Emergency Price Control Act of 1942 (56 Stat. 23, as amended by the Stabilization Extension Act of 1944, 58 Stat. 632, 640, 50 U. S. C. App. Supp. V, 901, *et seq.*) and the Rent Regulation for Housing, as amended (8 F. R. 14663, 10 F. R. 3436). The pertinent provisions are set forth in the Appendix, *infra*, pp. 19–26.

STATEMENT

The respondent, Charles Stone, was the owner of a house situated at 148 West Washington Street, Mooresville, Indiana (R. 11, 44). On or about August 1, 1944, he rented these premises to C. F. A. Locke for $75.00 per month (R. 5,

45).[1] This was the first rental of the premises (R. 45). Section 7 of the Rent Regulation for Housing (Appendix, *infra,* pp. 24–25) required that a registration statement be filed with the Administrator within thirty days of such first rental; and Section 4 (e) (Appendix, *infra,* pp. 22–23) provided that this first rental should constitute the prescribed maximum rent until reduced by the Administrator. The purpose of the registration statement is to put the Administrator promptly on notice of the rental of premises not previously rented and registered, and to give him an opportunity to review the rental to determine whether it is excessive. Section 4 (e) likewise provided that if the landlord fails to file a registration statement within such thirty day period, any rent received from the time of the first renting should be subject to refund to the tenant of any amount in excess of the maximum rent which later might be established by an order issued under Section 5 (c) (1) (Appendix, *infra,* pp. 23–24), and that such amount should be refunded to the tenant within thirty days after the date of issuance of such an order. Section 5 (c) (1) authorized the decrease of maximum rents thus established where they were higher than

[1] The respondent claimed to believe that the rental of the property was, in fact, a trade with the tenant (R. 40), although, as the court below pointed out (R. 49), the tenant did not own any property.

those generally prevailing for comparable housing accommodations on the maximum rent date.

Instead of registering the premises within thirty days after August 1, 1944, as was required by the Regulation upon a first renting, the respondent never filed a registration statement (R. 45). In April 1945, the respondent sold the premises to one Henley who, in June 1945, filed a registration statement (R. 8, f. 14).

On June 28, 1945, the Area Rent Director, acting pursuant to authority vested in him by Section 5 (c) of the Regulation (Appendix, *infra,* p. 24), reduced the rent from $75.00 to $45.00 per month, effective from the first rental, and ordered the respondent to refund the excessive amounts collected ($30.00 for each of the nine months August 1944 through April 1945 (R. 2)) within thirty days thereafter (R. 15–16, 45). The respondent failed to obey this order (R. 45). The tenant having failed to institute an action under Section 205 (e) of the Act, this suit was instituted by the Administrator on February 1, 1946, for $810.00, three times the $270.00 excessive rent which the respondent had failed to refund (R. 1–2). After a trial, the court held that the one-year statute of limitations in Section 205 (e) of the Act barred that portion of the Administrator's claim which was based upon failure to refund excessive amounts collected more than a year before the institution of the action, and awarded damages of $90.00, the single

amount of the excess rent collected for the months of February, March, and April, 1945, which were within the year prior to the filing of the complaint (R. 43–44). The circuit court of appeals affirmed the judgment (R. 49–52), likewise resting its decision on the ground that the statute of limitations ran from the various times when the landlord collected the rent from the tenant (R. 52).

SPECIFICATION OF ERROR TO BE URGED

The circuit court of appeals erred in holding that the statute of limitations provided by Section 205 (e) of the Emergency Price Control Act runs from the various times on which the landlord collected rent from the tenant, rather than from the date on which the landlord violated the retroactive rent reduction order by his failure to refund the excess rent.

SUMMARY OF ARGUMENT

The plain words of the Act compel a rejection of the conclusion reached by the court below that the statute of limitations runs from the time that rent is paid rather than from the time the landlord refuses to obey the order to refund. Section 205 (e) of the Act provides that suit may be brought "within one year from the date of the occurrence of the *violation* * * * on account of the overcharge." [Italics supplied.] There was no violation prior to July 29, 1945, because

until the rent reduction order of June 28, 1945, the legal maximum was no lower than the rent actually collected, and, under that order, the respondent had 30 days in which to make the refund of the excess he had collected over the newly established maximum. Thus, if the respondent had refunded the excess payments to the tenant, there would have existed no cause of action. The statute of limitations could not have commenced to run before the cause of action accrued.

The only violation which had occurred before July 29, 1945 was the failure to register, and that violation could not give rise to a suit for treble damages, such as is here concerned, nor was it in any sense an overcharge.

Even if it could be said that the overcharges occurred on each date on which the rent was paid, the Act carefully distinguishes between the terms "overcharge" and "violation" and makes the statute of limitations commence to run upon the occurrence of the latter and not the former.

The result reached by the court below would allow the wrongdoer to benefit from his own wrong, because, if he delayed long enough in filing a registration statement or failed to file one at all, his tenant could not recover any rent collected more than a year before the discovery of the failure to register, no matter how excessive that rent was. The decision below grants a special advantage to wilfull violators, since, if it is allowed to stand, such violators would be im-

munized from treble damage suits based on excessive rent collections made more than a year before suit was brought.

ARGUMENT

THE PETITIONER IS ENTITLED TO JUDGMENT FOR THE ENTIRE AMOUNT OF THE EXCESSIVE RENT COLLECTED

A. *The cause of action accrued only after the respondent had failed to comply with the Rent Director's order.*—When the respondent first rented his home in Mooresville, Indiana, on August 1, 1944, and demanded and received $75 per month as rental (R. 45), that rental of $75 per month was the "maximum rent" under Section 4 (e) of the Rent Regulation, until changed by order of the Administrator entered pursuant to Section 5 (c) (1) of the Rent Regulation. See Appendix, *infra*, pp. 22–25. Thus, until the maximum rent was "changed from $75.00 per month to $45.00 per month" by order of the Rent Director issued on June 28, 1945 (R. 15, 45), there was neither an overcharge nor a violation of "a regulation, order, or price schedule prescribing a maximum price or maximum prices". Section 205 (e), Emergency Price Control Act, Appendix, *infra*, p. 20.

Indeed, since the Rent Director's order of June 28, 1945 afforded the respondent a period of 30 days within which to refund rent received

after the effective date of the order (the date of first rental) in excess of $45 (R. 15–16, 45) there was no violation of that order until July 29, 1945, 31 days after the date of the order.

These facts make it perfectly clear that a cause of action under Section 205 (e) of the Act accrued to neither the respondent's tenant nor the Administrator before July 29, 1945. While the respondent's failure to file a timely registration statement for the premises in question violated Section 7 of the Rent Regulation for Housing, such violation did not result in an overcharge to the tenant and, consequently, did not give rise to a violation of an order establishing a maximum rent for which Section 205 (e) of the Act gives a cause of action.[2] Prior to the Rent Director's order establishing retroactively a reduced maximum rent, neither the tenant nor the Administrator could bring an action for overcharges because such overcharges had not occurred.

Thus, the court below, by ruling that the one year statute of limitations prescribed by Section

[2] The court below relied on *Thierry* v. *Gilbert*, 147 F. 2d 603 (C. C. A. 1), to support its conclusion that the violations occurred when the rent was paid. But that case involved neither a refund order nor any question of the statute of limitations. It held only that where a landlord charged more than the already established maximum rent every month, each collection of more than the maximum rent constituted a separate violation giving rise to individual causes of action upon which the tenant could collect the minimum recovery of $50. The decision in the *Thierry* case in no way affects the issue here involved.

205 (e), bars the Administrator from recovering excessive rents collected more than one year before the date suit is brought (R. 52), has, in effect, held that the statute of limitations begins to run before the cause of action comes into existence. This holding disregards the rule that a statute of limitations commences to run only when a cause of action has accrued so that suit may be instituted upon it. In *Rawlings* v. *Ray*, 312 U. S. 96, the Comptroller of the Currency assessed the shareholders of a bankrupt bank 50% of the par value of the shares. The assessment was made on November 6, 1935, and was required to be paid on or before December 13, 1935. The defendant, a shareholder, having failed to pay, suit was brought on December 7, 1938. A three year statute of limitations being applicable, the case turned on whether the statute began to run on the date of assessment or the date the assessment was payable. This Court held (312 U. S. at 98):

> While the assessment was made on November 6, 1935, it was expressly made payable on or before December 13, 1935. Respondent was allowed until that date to pay and prior thereto suit could not be maintained against him. Hence the statute of limitations did not begin to run until December 13, 1935, and the suit was in time.

The doctrine is further illustrated by *Fisher* v. *Whiton*, 317 U. S. 217, which also involved an

assessment against the shareholder of a bankrupt bank. There, the Comptroller of the Currency levied the assessment on April 19, 1934, payable May 26, 1934. By four successive orders, the original maturity date of May 26, 1934, was extended to April 15, 1935. Under the applicable statute of limitations, the suit on the assessment would have been barred if the limitations period had begun to run on the date the assessment was first payable. This Court, carrying the doctrine of the *Rawlings* case one step further, held that "since the Comptroller has power to extend the time for payment, respondent was not required to pay until April 15, 1935 and prior to that time suit could not be instituted against her" (317 U. S. at 220). Therefore, the cause of action accrued on that date, and the statute of limitations commenced to run then. To the same effect see *Cope* v. *Anderson*, 331 U. S. 461.[3]

In reaching a conclusion directly contrary to that adopted by the court below, the Circuit Court of Appeals for the Fourth Circuit said (*Creedon* v. *Babcock*, 163 F. 2d 480, 483):

> Failure to register gave no right to sue and therefore does not govern the limita-

[3] A situation analagous to that presented here is found in treble damage suits brought more than a year after an overceiling sale but less than a year after delivery. In such a case, although the recovery is predicated on an overcharge, the limitation period runs from the violative delivery. *Schreffler* v. *Bowles*, 153 F. 2d 1 (C. C. A. 10), certiorari denied, 328 U. S. 870.

tion period. Compare *Rawlings* v. *Ray*, 312 U. S. 96, 61 S. Ct. 473, 85 L. Ed. 605. Until the last day on which refund could be made in compliance with the O. P. A. order, that is, 30 days after the order was issued, or January 30, 1945, there could be no violation. This must be so since a refund payment prior to that date would have been in full compliance with the order and hence would have given no foundation for suit. It follows necessarily from the plain and imperative words of the Act—"within one year from the date of the occurrence of the violation"—that the limitation period started the day following January 30, 1945, which was the date of the occurrence of the violation.

With the exception of that here involved, all the district court decisions that have come to our attention have held, contrary to the court below, that the statute of limitations commences to run 30 days after the issuance of the refund order. *Porter* v. *Butts*, 68 F. Supp. 516 (S. D. Ohio); *Haber* v. *Garthly*, 67 F. Supp. 774 (E. D. Pa.); *Porter* v. *Sandberg*, 69 F. Supp. 29 (W. D. Ark.); *Parham* v. *Clark*, 68 F. Supp. 17 (E. D. Mich.); *Porter* v. *Kaibel*, 5 OPA Op. & Dec. 5117 (D. Minn.); *Bowles* v. *Buckner* (W. D. Wash.), decided Feb. 12, 1946, No. 1281; *Bowles* v. *Gotterdam* (S. D. Ohio), decided May 5, 1947, No. 1465; *Fleming* v. *O'Sullivan* (W. D. Calif.), decided March 13, 1947, No. 26257R.

The view of the court below was that (R. 52):

> There is no merit in the contention that the violation upon which this cause of action is based is the failure or refusal to make the refund. Such a failure or refusal is a violation of § 4 (e) of the Rent Regulation for Housing, and if a refund order is issued by the Administrator, it is a violation of the order; but such failure or refusal is not the violation specified in § 205 (e), which is the violation of the "maximum price regulation" or order.

A mere reading of the order here involved demonstrates the error in the conclusion of the court below that there has been no violation of a "regulation, order, or price schedule prescribing a maximum price" within the meaning of Section 205 (e). That order reads in relevant part, as follows (R. 15):

> on the basis of the rent which the Rent Director finds was generally prevailing in this Defense-Rental Area for comparable housing accommodations on the Maximum Rent Date, it is ordered that the Maximum Rent for the above-described accommodations be, and it hereby is, changed from $75.00 per month to $45.00 per month.

Since this order, on its face, is one "prescribing a maximum price", and since its violation is a violation of Section 2 (a) of the Rent Regulation, Section 5 (c) (1) of which authorizes orders of the sort issued here (Appendix, *infra*, pp. 22, 24), violation of either or both is, of course, "the

violation specified in § 205 (e)" (R. 52). The order of June 28, 1945, does not become any less an order "prescribing a maximum price" because, at its foot, it directs a refund of rent collected in excess of the maximum fixed (R. 15–16). That being so, it clearly follows that the cause of action for the recovery of excessive rents collected from the effective date of the order (the first rental date) accrued only when there was a violation of the order, and that the statute of limitations only then began to run. For Section 205 (e) provides that suit may be brought "within one year from the date of the occurrence of the violation."

B. *The failure to comply with the Rent Director's order was the "violation" which started the running of the statute of limitations.*—Even if it could be said that the overcharges occurred on each date on which the rent was paid, it could not be said that the statute of limitations commences to run from the date of the overcharge rather than from the date of the violation, the latter being a time which, as we have shown (*supra*, pp. 7–8), could not have antedated the Rent Director's order. The contrary construction finds no justification in the words of the Act, nor is it warranted by any other consideration. It cannot be said that Congress used the word "violation" loosely or by mistake and intended instead to say "overcharge". The limitation sentence referred to above declares in part "If any person selling

a commodity violates a regulation, order, or price schedule prescribing a maximum price * * * the person who buys such commodity * * * may, within one year from the date of the occurrence of the *violation* * * * bring an action against the seller on account of the *overcharge* * * *". Reference to this limitation provision shows that Congress used the two italicized words in the same sentence for different purposes, keeping clearly in mind their difference in meaning. The same distinction is carefully drawn in several other portions of the section. In each instance, "violation" is used as indicating the point from which the statute begins to run, and "overcharge" as indicating the basis for, and partial measure of, damages in the action.

To adopt the reasoning of the court below, however, would require the conclusion that Congress intended the word "violation" to mean "overcharge" despite the careful differentiation between them. We may not assume that in using two different words in the same section Congress intended to convey the same meaning for both words.

Again, the point is aptly stated by the court in the *Babcock* case (163 F. 2d at 483):

> It becomes apparent, upon a close reading of the Act, that the word *violation* is used in a sense that is quite separate and distinct from the word *overcharge*. Par-

ticularly significant is the first sentence of Section 205 (e) quoted above: "If any person selling a commodity violates a * * * order * * * prescribing a maximum price * * * the person who buys such commodity * * * may, within one year from the date of the occurrence of the *violation* * * * bring an action against the seller on account of the *overcharge* * * *." *Violation* is used to indicate the point from which the statute begins to run, whereas *overcharge* indicates the basis of, and the yardstick for, damages.

C. *The decision below affords a benefit to those who compound their violation by failing to file a registration statement not available to those who comply with registration statement requirements.*—The conclusion reached by the court below is at odds with the established principle that a wrongdoer may not benefit from his own wrong (see, e. g. *Bigelow* v. *RKO Radio Pictures, Inc.*, 327 U. S. 251; *R. H. Stearns Co.* v. *United States*, 291 U. S. 54). The retroactive rent reduction order, which must be accepted as valid in these proceedings,[4] is issued only where a landlord has

[4] Section 204 (d), Emergency Price Control Act, 56 Stat. 31, 50 U. S. C. App. Supp. V, 924 (d); *Bowles* v. *Willingham*, 321 U. S. 503; *Porter* v. *McRae*, 155 F. 2d 213 (C. C. A. 10); *Bowles* v. *Lake Lucerne Plaza*, 148 F. 2d 967 (C. C. A. 5), certiorari denied, 326 U. S. 726; *Fleming* v. *Dashiel*, 161 F. 2d 612 (C. C. A. 9). In the brief in opposition to the petition for certiorari, respondent conceded that "the validity of

failed to file a timely registration statement.[5] By his delay, the fact of renting is concealed from the Administrator and investigation of the premises for review of the maximum rental is postponed. To prevent the landlord from benefiting from his own complete disregard of the Act and the Rent Regulation, the retroactive order requires him to refund to the tenant all overcharges collected during the period of noncompliance. On the theory upheld by the Sixth Circuit, however, the longer the delay or "* * * the more grievous the wrong done, the less likeli-

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the amount of the refund or his right to order a refund is not to be questioned in the District or Circuit Court." (p. 4.) But respondent apparently contends that that rule does not apply to an order or regulation which on its face is illegal. The contrary doctrine that the validity of even an order which is on its face invalid may only be assailed in the Emergency Court of Appeals is well established. *United States* v. *George F. Fish, Inc.*, 154 F. 2d 798, 800 (C. C. A. 2) certiorari denied, 328 U. S. 869; *United States* v. *Tantleff*, 155 F. 2d 27 (C. C. A. 2), certiorari denied *sub nom. Lieberman* v. *United States*, 328 U. S. 869. Moreover, the Emergency Court of Appeals has several times sustained the validity of retroactive rent orders. *Easley* v. *Fleming*, 159 F. 2d 422 (E. C. A.); *Womack* v. *Bowles*, 146 F. 2d 497 (E. C. A.); *Ambassador Apartments* v. *Porter*, 157 F. 2d 774 (E. C. A.).

[5] See Section 4 (e) of the Rent Regulation for Housing; cf. *Porter* v. *Senderowitz*, 158 F. 2d 435 (C. C. A. 3), certiorari denied, 330 U. S. 848; *Porter* v. *Kramer*, 156 F. 2d 687 (C. C. A. 8); *Martini* v. *Porter*, 157 F. 2d 35 (C. C. A. 9), certiorari denied, 330 U. S. 848; *Porter* v. *Eastern Sugar Associates*, 159 F. 2d 299 (C. C. A. 4).

hood there would be of recovery." *Bigelow* v. *RKO Radio Pictures, Inc.*, 327 U. S. at p. 265.[6]

If the judgment below is allowed to stand, a tenant will be denied all recovery of excessive rents collected more than one year before suit is filed even though suit could not be filed sooner because the failure of the landlord to register had prevented determination of an appropriate maximum rental. While the decision below, applying as it does only to Section 205 (e), would not take from the Expediter his right to sue for restitution of all excessive rent under Section 205 (a) (Appendix, *infra*, p. 19; *Porter* v. *Warner Co.*, 328 U. S. 395), it would frustrate, *pro tanto*, his right[7] to invoke the treble damage provisions of Section 205 (e), applicable to wilfull or negligent violators, with respect to rents collected more than one year before the action for such damages is brought. Thus the wilfull violators are given the greatest advantage by the decision below.

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[6] It is wholly irrelevant that all the payments of rent occurred less than a year prior to July 29, 1945, so that, had suit been filed immediately, the statute of limitations could not have barred any part of the claim. The Administrator was not compelled to bring suit at once but was given a year within which to do so. Moreover, the ruling below would be equally applicable where the refund order was issued more than a year after certain of the payments of rent.

[7] Or that of the tenant if he brings suit within thirty days.

CONCLUSION

The decision of the court below should be reversed and the cause remanded with directions to enter a judgment against the respondent for the entire amount of the refund required by the order of June 28, 1945.

Respectfully submitted.

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JANUARY 1948.

APPENDIX

1. Pertinent provisions of Emergency Price Control Act of 1942 (56 Stat. 23), as amended by Stabilization Extension Act of 1944 (58 Stat. 632, 50 U. S. C. App., Supp. V, Sec. 901, *et seq.*) are:

SEC. 4. (a) It shall be unlawful, regardless of any contract, agreement, lease, or other obligation heretofore or hereafter entered into, for any person to sell or deliver any commodity, or in the course of trade or business to buy or receive any commodity, or to demand or receive any rent for any defense-area housing accommodations, or otherwise to do or omit to do any act, in violation of any regulation or order under section 2, or of any price schedule effective in accordance with the provisions of section 206, or of any regulation, order, or requirement under section 202 (b) or section 205 (f), or to offer, solicit, attempt, or agree to do any of the foregoing.

SEC. 205. (a) Whenever in the judgment of the Administrator any person has engaged or is about to engage in any acts or practices which constitute or will constitute a violation of any provision of section 4 of this Act, he may make application to the appropriate court for an order enjoining such acts or practices, or for an order enforcing compliance with such provision, and upon a showing by the Administrator that such person has engaged or is about to engage in any such acts or practices a permanent or temporary injunction, restraining order, or other order shall be granted without bond.

SEC. 205. (e) If any person selling a commodity violates a regulation, order, or price schedule prescribing a maximum price or maximum prices, the person who buys such commodity for use or consumption other than in the course of trade or business may, *within one year from the date of the occurrence of the violation, except as hereinafter provided, bring an action against the seller on account of the overcharge. In such action, the seller shall be liable for reasonable attorney's fees and costs as determined by the court, plus whichever of the following sums is the greater: (1) Such amount not more than three times the amount of the overcharge, or the overcharges, upon which the action is based as the court in its discretion may determine, or (2) an amount not less than $25 nor more than $50, as the court in its discretion may determine: Provided, however, That such amount shall be the amount of the overcharge or overcharges or $25, whichever is greater, if the defendant proves that the violation of the regulation, order, or price schedule in question was neither wilful nor the result of failure to take practicable precautions against the occurrence of the violation.*[1] For the purposes of this section the payment or receipt of rent for defense-area housing accommodations shall be deemed the buying or selling of a commodity, as the case may be; *and the word "overcharge" shall mean the amount*

[1] As amended by Sec. 108 (b) of Stabilization Extension Act of 1944. Formerly read, in place of italicized language: "* * * bring an action either for $50 or for treble the amount by which the consideration exceeded the applicable maximum price, whichever is the greater, plus reasonable attorney's fees and costs as determined by the court."

by which the consideration exceeds the applicable maximum price.[2] If any person selling a commodity violates a regulation, order, or price schedule prescribing a maximum price or maximum prices, and the buyer *either fails to institute an action under this subsection within thirty days from the date of the occurrence of the violation or is not entitled for any reason to bring the action, the Administrator may institute such action on behalf of the United States within such one-year period. If such action is instituted by the Administrator, the buyer shall thereafter be barred from bringing an action for the same violation or violations. Any action under this subsection by either the buyer or the Administrator, as the case may be, may be brought in any court of competent jurisdiction. A judgment in an action for damages under this subsection shall be a bar to the recovery under this subsection of any damages in any other action against the same seller on account of sales made to the same purchaser prior to the institution of the action in which such judgment was rendered.*[3]

2. Pertinent Provisions of the Rent Regulation for Housing, as amended (8 F. R. 14663, 10 F. R. 3436):

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[2] Added by Sec. 108 (b) of Stabilization Extension Act of 1944.

[3] As amended by Sec. 108 (b) of Stabilization Extension Act of 1944. Formerly read, in place of italicized language: "* * * is not entitled to bring suit or action under this subsection, the Administrator may bring such action under this subsection on behalf of the United States. Any suit or action under this subsection may be brought in any court of competent jurisdiction, and shall be instituted within one year after delivery is completed or rent is paid. * * *"

SEC. 2. *Prohibition against higher than maximum rents*—(a) *General prohibition.*—Regardless of any contract, agreement, lease, or other obligation heretofore or hereafter entered into, no person shall demand or receive any rent for or in connection with the use or occupancy on and after the effective date of regulation of any housing accommodations within the Defense-Rental Area higher than the maximum rents provided by this regulation; and no person shall offer, solicit, attempt, or agree to do any of the foregoing. Lower rents than those provided by this regulation may be demanded or received.

* * * * *

SEC. 4. *Maximum rents.*—Maximum rents (unless and until changed by the Administrator as provided in section 5) shall be:

(a) *Rented on maximum rent date.*—For housing accommodations rented on the maximum rent date, the rent for such accommodations on that date.

* * * * *

(e) *First rent after effective date.*—For (1) newly constructed housing accommodations without priority rating first rented on or after the effective date of regulation, or (2) housing accommodations changed on or after such effective date so as to result in an increase or decrease of the number of dwelling units in such housing accommodations, or (3) housing accommodations not rented at any time during the two months ending on the maximum rent date nor between that date and the effective date, the first rent for such accommodations after the change or effective

date, as the case may be, but in no event more than the maximum rent provided for such accommodations by any order of the Administrator issued prior to September 22, 1942. Within 30 days after so renting the landlord shall register the accommodations as provided in section 7. The Administrator may order a decrease in the maximum rent as provided in section 5 (c).

If the landlord fails to file a proper registration statement within the time specified (except where a registration statement was filed prior to October 1, 1943) the rent received for any rental period commencing on or after the date of the first renting or October 1, 1943, whichever is the later, shall be received subject to refund to the tenant of any amount in excess of the maximum rent which may later be fixed by an order under section 5 (c) (1). Such amount shall be refunded to the tenant within 30 days after the date of issuance of the order. If the Administrator finds that the landlord was not at fault in failing to file a proper registration statement within the time specified, the order under section 5 (c) (1) may relieve the landlord of the duty to refund. Where a proper registration statement was filed before March 1, 1945, the landlord shall have the duty to refund only if the order under section 5 (c) (1) is issued in a proceeding commenced by the Administrator before September 1, 1945. Where a proper registration statement is filed on or after March 1, 1945, the landlord shall have the duty to refund only if the order under section 5 (c) (1) is issued in a proceeding commenced by the Administrator within three months after the date of filing of such registration statement. The

foregoing provisions and any refund thereunder do not affect any civil or criminal liability provided by the Act for failure to file the registration statement required by section 7.

* * * * *

SEC. 5. *Adjustments and other determinations.*—In the circumstances enumerated in this section, the Administrator may issue an order changing the maximum rents otherwise allowable or the minimum services required.

* * * * *

(c) *Grounds for decrease of maximum rent.*—The Administrator at any time, on his own initiative or on application of the tenant, may order a decrease of the maximum rent otherwise allowable only on the grounds that:

(1) *Rent higher than rents generally prevailing.*—The maximum rent for housing accommodations under paragraph (c), (d), (e), (g), or (j) of section 4 is higher than the rent generally prevailing in the Defense-Rental Area for comparable housing accommodations on the maximum rent date.

* * * * *

SEC. 7. *Registration*—(a) *Registration statement.*—On or before the date specified in Schedule A of this regulation, or within 30 days after the property is first rented, whichever date is the later, every landlord of housing accommodations rented or offered for rent shall file in triplicate a written statement on the form provided therefor to be known as a registration statement. The statement shall identify each dwelling unit and specify the maximum rent provided by this regu-

lation for such dwelling unit and shall contain such other information as the Administrator shall require. The original shall remain on file with the Administrator and he shall cause one copy to be delivered to the tenant and one copy, stamped to indicate that it is a correct copy of the original, to be returned to the landlord. In any subsequent change of tenancy the landlord shall exhibit to the new tenant his stamped copy of the registration statement, and shall obtain the tenant's signature and the date thereof, on the back of such statement. Within five days after renting to a new tenant, the landlord shall file a notice on the form provided therefor, on which he shall obtain the tenant's signature, stating that there has been a change in tenancy, that the stamped copy of the registration statement has been exhibited to the new tenant and that the rent for such accommodations is in conformity therewith.

When the maximum rent is changed by order of the Administrator, the landlord shall deliver his stamped copy of the registration statement to the area rent office for appropriate action reflecting such change.

SEC. 9.[4] *Evasion*—(a) *General.*—The maximum rents and other requirements provided in this regulation shall not be evaded, either directly or indirectly, in connection with the renting or leasing or the transfer of a lease of housing accommodations, by way of absolute or conditional sale,

[4] As amended by Am. 44, 10 F. R. 330, effective January 10, 1945, which added paragraph (b) and inserted "or by tying agreement" in paragraph (a).

sale with purchase money or other form of mortgage, or sale with option to repurchase, or by modification of the practices relating to payment of commissions or other charges or by modification of the services furnished with housing accommodations, or by tying agreement, or otherwise.

(b) *Purchase of property as condition of renting.*—Specifically, but without limitation on the foregoing, no person shall require a tenant or prospective tenant to purchase or agree to purchase furniture or any other property as a condition of renting housing accommodations.

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FILE COPY

No. 392

In the Supreme Court of the United States

October Term, 1947

TIGNER E. WOODS, REGIONAL EXPEDITER, OFFICE OF THE REGIONAL EXPEDITER,

Petitioner,

v.

CHARLES STONE,

ON WRIT OF CERTIORARI TO THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF SOUTH CAROLINA

BRIEF FOR THE RESPONDENT

In the Supreme Court of the United States

OCTOBER TERM, 1947

No. 392

TIGHE E. WOODS, HOUSING EXPEDITER, OFFICE OF THE HOUSING EXPEDITER, PETITIONER

v.

CHARLES STONE

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

SUPPLEMENTAL BRIEF FOR THE PETITIONER

This supplemental brief is prompted by the *amicus curiae* brief which has been filed in this case by Norma L. Comstock. The burden of that brief is that violation of a retroactive rent reduction order gives rise to no cause of action for damages under Section 205 (e) of the Emergency Price Control Act, and that the exclusive remedy for the failure or refusal of a landlord to refund excessive rent collected before the date of the order is a suit for restitution under Section 205 (a).

If there is no cause of action under Section 205 (e), there is, of course, no right at all to sue

for treble damages. That is a right which, under Section 205 (e), is, in the first instance, the tenant's.[1] And under the Housing and Rent Act of 1947 (Pub. L. No. 129, 80th Cong., 1st Sess., sec. 205) it is a right which is the tenant's alone. Hence there is a patent inconsistency between the *amicus'* repeated protestations of concern for the rights of tenants and the conclusion for which she contends.[2]

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[1] Even when the Expediter brings the suit for treble damages, his normal practice is to seek restitution of the amount of the overcharge for the tenant plus double damages, or, in the alternative, full treble damages if the court does not see fit to award restitution to the tenant. Instructions to this effect are contained in O. P. A. Manual, Vol. 9, Section 6602.07 (e), issued on Dec. 23, 1946; adopted by the Housing Expediter, Rent Control Order No. 1, dated May 2, 1947, § 820.1 (b), 12 F. R. 2986. This instruction declared:

"Subject to the exceptions stated in paragraph (f) below, all complaints filed in court which include a count for treble damages, shall include a count providing for restitution to the tenant of the amount of the overcharges from the beginning of rent control to the date of the complaint. The prayer of such complaint shall contain a condition to the effect that if restitution shall be granted by the court for a portion or all of the overcharges included in the count for treble damages, the prayer for treble damages shall be reduced by the amount of the restitution so included."

Restitution was not sought in this case since it was instituted before this Court had decided *Porter* v. *Warner Co.*, 328 U. S. 395 (June 3, 1946), authoritatively establishing the right to restitution, and before the above instructions were issued (R. 1, Complaint filed Feb. 1, 1946).

[2] Feeling, as we do, that this Court should know the interests of its "friends," we are conscious of no impropriety in noting that three of the attorneys who have signed the brief

The purpose of the rent control legislation to protect tenants from excessive charges for housing would tend thus to be frustrated rather than furthered were the *amicus* position to be adopted. The error in that position, moreover, is made plain by an analysis of the contentions of the *amicus* in the light of the applicable provisions of the statute and the regulations.

A. *The contention that the gist of the violation is violation of the refund order, not violation of the rent reduction order.*—The *amicus'* argument in this respect is twofold: (1) that, under Section 205 (e), the only "overcharge" that will sustain an action "is a charge that 'exceeds' the maximum price 'applicable' at the instant it is made" (Br. 4), and (2) that the rent reduction order, without the refund order, "is prospective, not retroactive, in essence, scope and intent" (Br. 6). We shall deal with these arguments *seriatim*.

1. The short answer to the argument that there is no "overcharge" under Section 205 (e), unless

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amicus, professedly concerned primarily with the rights of tenants are counsel for the landlord in *Creedon* v. *Roupp*, D. Colo., No. 2224, an action much like that here involved. The attorneys for the defendant landlord are Messrs. Sherer, Melville, and Pringle. On November 6, 1947, Judge Symes granted the Expediter's motion for summary judgment in that action, but left for later determination the amount of damages. He held, also, that the landlord could be compelled, in a Section 205 (e) suit, to refund the overcharge to the tenant, the single amount of the overcharge there involved being approximately $9,000.

the charge exceeds the maximum applicable at the instant it is made, is that there is nothing in Section 205 (e) to support it. When defining the word "overcharge" in Section 205 (e), Congress could readily have provided that "the applicable maximum price" is the one in effect when the consideration is received. It did not do so; it simply used the word "applicable," and thus left it open to the Administrator to prescribe, as he did in Section 4 (e) of the Rent Regulation and, more specifically, in the order in the instant case, for retroactive applicability of a maximum fixed with respect to a landlord who has failed to file a registration statement. See Appendix to our main brief, p. 23. The question of the validity of that regulation and order is, of course, not open in this Court. Main Brief, pp. 15–16, note 4. That being so, the specification in the order here involved of the date of first rental as the effective date of the reduced maximum rent (R. 15) must be accepted as valid here.

The word "applicable" in Section 205 (e) cannot have one meaning for rent control and another for price. Yet the *amicus*, under the compulsion of substantial federal authority, seems to concede that treble damage suits may be based on retroactive pricing orders (Br. 9–10). She seeks to distinguish the line of authority in the price cases on the ground that the seller there knew or could have known his correct maximum price before he

sold, while here the landlord had "no conceivable means of knowing whether his maximum rent would later be reduced at all, or, if reduced, what the new figure would be." Br. 10. But the statement as to the landlord's inability to protect himself is completely untrue. All the landlord had to do was to file a registration statement; by so doing, he could have wholly avoided the entry of any retroactive rent reduction order, and thus been assured that the rent he was collecting was and would remain lawful. The landlord who inadvertently fails to file a registration statement is protected by that provision of Section 205 (e) which limits the liability to single damages or $25, whichever is greater, when the landlord can prove that his violation was neither "wilfull nor the result of a failure to take practicable precautions against the occurrence of the violation." See Appendix to main brief, p. 20.

In this connection, the *amicus* cites *Senderowitz* v. *Clark,* 162 F. 2d 912 (E. C. A.), as voiding the retroactive effect given to the order sued upon in *Porter* v. *Senderowitz,* 158 F. 2d 435 (C. C. A. 3), certiorari denied *sub nom. Senderowitz* v. *Fleming,* 330 U. S. 848. But in *Senderowitz* v. *Clark,* Judge Magruder, concurring, specifically pointed out the distinction between that case and the one here involved. He stated (162 F. 2d at 917):

> But the regulation did not specifically reserve to the Price Administrator the power

> to make any such adjustment order retroactive, to cover past sales, whether or not the reporting provision had been complied with on time. * * * The seller ought not to gain by a failure to make a timely compliance with the reporting provision, but it seems to have been a casus omissus in the regulation. In this respect the regulation is in marked contrast with the Rent Regulation for Housing. The rent regulation provides that, in the case of new housing accommodations first rented after the effective date of the regulation, the landlord's self-determined "first rent" shall become the maximum rent, subject to subsequent reduction by the Price Administrator to the level of the rents generally prevailing on the maximum rent date for comparable accommodations in the defense-rental area. There is also a reporting requirement in the rent regulation; but in that regulation the Price Administrator specifically reserves the power to make a subsequent reduction to the level of comparability retroactive if the landlord fails to comply with the reporting requirement, that is, fails to file a registration statement within 30 days after the first renting." See *150 East 47th Street Corp.* v. *Creedon,* Em. App. 1947, 162 F. 2d. 206.

And in the *150 East 47th Street Corp.* case, cited by Judge Magruder, which was decided eighteen days before *Senderowitz* v. *Clark,* the same judges who sat in the latter case upheld the

validity of a retroactive rent reduction order such as is here involved.[3] See also, *Easley* v. *Fleming*, 159 F. 2d 422 (E. C. A.); *Womack* v. *Bowles*, 146 F. 2d 497 (E. C. A.); *Ambassador Apartments* v. *Porter*, 157 F. 2d 774 (E. C. A.).

2. A mere reading of the rent reduction order, quite apart from the refund order, serves to rebut the *amicus'* contention that it is prospective "in essence, scope and effect." Before the word "refund" is mentioned, the rent reduction order expressly provides that it is "effective beginning" "From the date of such first renting * * *" (R. 15). Thus, even if there were no refund provisions in the order, the landlord would be liable to suit under Section 205 (e) for violation of the

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[3] In the *150 East 47th Street Corp.* case, the tenant had sought only to recover the single amount of the overcharge. But, as the record in that case shows, the tenant's action was one under § 205 (e) of the Price Control Act and was brought for single damages only because the tenant chose to do so. By its own terms, § 205 (a), under which the Expediter may sue to compel restitution, *Porter* v. *Warner Holding Co.*, 328 U. S. 395, does not authorize any action by a tenant. It provides:

"SEC. 205. (a) Whenever in the judgment of the Administrator any person has engaged or is about to engage in any acts or practices which constitute or will constitute a violation of any provision of section 4 of this Act, he may make application to the appropriate court for an order enjoining such acts or practices, or for an order enforcing compliance with such provision, and upon a showing by the Administrator that such person has engaged or is about to engage in any such acts or practices a permanent or temporary injunction, restraining order, or other order shall be granted without bond."

order fixing a reduced maximum rent. The provisions in the Regulations with respect to refund orders merely supply an administrative device for tempering the effect of the retroactive rent reduction order. Section 4 (e) grants the landlord 30 days within which to comply with the refund order; if it is complied with, that is an end of the landlord's liability. Thus compliance with the refund order is the "last clear chance" accorded a landlord. But if he fails to take it, the refund provisions become irrelevant, and Section 205 (e) comes into play. What the *amicus* has sought to do is to elevate the refund provisions, an administrative act of grace, into a limitation on the statute itself.

C. *The contention that the Rent Regulation makes no provision for damages in the nature of penalties as a consequence of violation of a refund order.*—The *amicus* argues (Br. 7) that Section 4 (e) of the Rent Regulation (see Appendix to our main brief, p. 23) gives public notice to landlords who fail to file a registration statement that they may be subjected to a refund order if their maximum rent is subsequently decreased; she contends that this is the only consequence to which the attention of landlords is called and that, that being so, the Administrator cannot "thereafter seek to penalize them in three times the amount of the refunds". (Br. 7.)

In the first place, the liability of the landlord for damages is fixed by the Price Control Act, not by the Regulation. Even if the Regulation had provided no sanction for its violation, a landlord would be subject to all the sanctions provided by the Act. But the Rent Regulation, in its Section 10, does contain an express warning of treble damage liability in a situation like that at bar. It provides that "Persons violating any provision of this regulation are subject to criminal penalties, civil enforcement actions and *suits for treble damages as provided for by the Act.*" (Italics supplied.) 8 F. R. 14669, 10 F. R. 3443. Since Section 205 (e) provides for treble damage liability upon violation of a "regulation, order, or price schedule prescribing a maximum price or maximum prices" (Appendix to our main brief, p. 20), Section 10 of the Regulation must be read as contemplating treble damage liability for violation of the rent reduction order by failing or refusing to make the restitution required by the refund order. Indeed, in the case at bar, the respondent's attention was directed specifically to Section 205 (e) (R. 17).

We do not, of course, deny that Section 4 (e) of the Rent Regulation makes no mention of treble damage liability. As pointed out *supra*, p. 8, the refund provisions constitute an administrative mechanism through which landlords who

take advantage of their terms may limit their liability. But when, as here, there is a failure or refusal to comply with the refund order, there is for the first time a violation of the retroactive maximum rental reduction order (see our main brief, pp. 7–13), which brings into operation the provisions of Section 205 (e).

This regulatory scheme thus draws a sensible line between landlords who finally bring themselves into compliance by making the refund and those who fail or refuse to do so. The former are not subjected to treble damage liability; the latter, whose recalcitrance forces the tenant or the Expediter to institute suit, may be subjected to such liability.

There has been no variation in the administrative construction of the Rent Regulation as authorizing the entry of retroactive rent reduction orders which give rise to causes of action under Section 205 (e), if the landlord fails to take advantage of the refund option afforded him. And, in only two instances, has a court cast any doubt on the propriety of that construction.[4]

D. *The contention that the amicus view can prevent the landlord from gaining advantage from*

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[4] *Fleming* v. *Banks*, California Superior Court, decided October 3, 1947, petition for review denied by California Supreme Court, January 12, 1948 (the Superior Court opinion is reprinted as an Appendix to the *amicus* brief); and an unreported decision in *Stitzinger* v. *D. C. Improvement Co.*, Common Pleas, Cuyahoga County, Ohio, 1946.

his own wrong.—The *amicus* states that if "the wrongdoer is forced to give back that which he has obtained illicitly, the score is settled." (Br. 12.) But the fact is that Congress assumed the inadequacy of mere restitution, both as a means of "settling the score" with the tenant and in terms of enforcement needs, when it provided for treble damage actions.

When all is said and done, the *amicus* does not and cannot negate the fact that, under her view, a landlord who obeys the law and files a registration statement but then overcharges is liable to a treble damage assessment, but that a landlord who fails even to file a registration statement incurs no treble damage liability. This is a result which could be justified only under a statute and regulations which plainly permitted no other. That is not the situation here.

Respectfully submitted.

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No. 392

In The Supreme Court of The United States

October Term, 1947

FRANK E. CREEDON, HOUSING EXPEDITER,
OFFICE OF THE HOUSING EXPEDITER,
PETITIONER

V.

CHARLES STONE

BRIEF OF RESPONDENT IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

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V.

CHARLES STONE

BRIEF OF RESPONDENT IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

Charles Stone, respondent herein, files this brief in opposition to the petition for writ of certiorari, and urges that this Court should not review the judgment of the United States Circuit Court of Appeals for the Sixth Circuit in the above entitled cause entered July 28, 1947, affirming a decision of the United States District Court for the Northern District of Ohio.

Jurisdiction

Respondent acknowledges jurisdiction of this Court as set forth on page 2 of the Petition.

Questions Presented

1. Where a landlord fails to register newly rented premises within the thirty-day period prescribed by the rent regulation, and the rent director reduces the maximum rent, does the rent director have authority to order a refund, retroactive to the date of first renting?

2. Does the statute of limitation provided by Section 205(e) of the Emergency Price Control Act, as amended, run from the time when a tenant pays rent to a landlord who has neglected to file a timely registration statement of his housing accommodations, or from the time that the landlord fails or refuses to obey a retroactive rent reduction order directing him to refund overcharges to the tenant?

Statute and Regulation Involved

Respondent agrees that the statute and regulation involved is, as stated on pages 2 and 3 of the Petition.

Statement

Respondent accepts the statement as set forth on pages 3-5 of the Petition, with the following additions:

1. That on the trial in the District Court, defendant (respondent herein) urged there never was a rental agreement but rather that the arrangement constituted an exchange of houses (R. 4, 7).

2. That in his brief filed in the District Court, and in his brief filed in the Circuit Court, respondent challenged the authority of the rent director to make a retroactive order of refund.

Specification of Error

Respondent denies that the Circuit Court of Appeals erred, as alleged on page 5 of the Petition.

REASONS FOR DENIAL OF THE WRIT

I. Where a landlord fails to timely register rented property, the rent director may reduce the maximum rental, but he has no authority to make such reduction of rental retroactive.

The rent regulation, insofar as this phase of the argument is concerned, provides:

> "If a landlord fails to file a proper registration statement within the time specified . . . the rent received for any rental period commencing on or after the date of the first renting . . . shall be received subject to refund to the tenant of any amount in excess of the maximum which may later be fixed by an order under section 5(c). Such amount shall be refunded to the tenant within thirty days after the date of the issuance of the order . . ."

There is a rule of statutory construction that words in a statute are given their ordinary meaning, and the entire statute is read to ascertain the meaning of the legislature (Congress). The order referred to in said section means the order reducing the rent, and said statute must be read as follows:

> "If the landlord fails to file a proper registration statement . . . the rent received for any rental period . . . shall be received subject to refund to the tenant of any amount in excess of the maximum rent which may later be fixed by an order. Such amount shall be refunded . . . after the date of the issuance of the order (order reducing maximum rental) . . ."

The office of price administration, being a statutory body, created by special statutory enactment, the rent administrator may only do those acts and enter such orders as are specifically permitted and the authority for which is specifically granted in the legislation itself. The rent director cannot take unto himself powers or rights which are not granted by the act, and consequently, there being no provision in the statute authorizing the rent director to make any order of refund, the order of refund is a nullity. While it is true that the United States Supreme Court has ruled that the validity of any order of the O.P.A. rent director cannot be questioned except in the Emergency Court of Appeals,[1] nevertheless, that ruling only applies to the validity of any act which the director was authorized to do or any order which he was authorized to make, and would not apply to an act which on its face is illegal.

In other words, the validity of the amount of the refund or his right to order a refund is not to be questioned in the District or Circuit Court. But, the authority of the director to do any act not authorized by the rent regulation act may be questioned in any court.

However, the Court has the right, authority and jurisdiction to interpret the Act and to rule on whether or not the rent director is authorized to make a retroactive reduction in rental.

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[1]Bowles v. Meyers, 149 F(2) 440;
Porter v. Eastern Sugar Associates, 159 F(2) 299.

II. The statute of limitation provided by section 205(e) of the Act begins to run from the time the rent is paid.

The Act in question, insofar as it is pertinent to the present issues, reads as follows:

> "If any person selling a commodity (collecting rent) violates a regulation, order or price schedule prescribing a maximum price or maximum prices (maximum rent) the person who buys such commodity for use or consumption other than in the course of trade or business (the tenant), may, within one year from the date of the occurrence of the violation, except as hereinafter provided, bring an action against the seller (landlord) on account of the overcharge . . . For the purpose of this section, the payment or receipt of rent for defense area accommodations shall be deemed the buying or selling of a commodity as the case may be; and the word 'overcharge' shall mean the amount by which the consideration exceeds the applicable maximum price. If any person selling a commodity (renting premises) violates a regulation, order or price schedule prescribing a maximum price or maximum prices, and the buyer (tenant) either fails to institute an action under this sub-section within thirty days from the date of the occurrence of the violation or is not entitled for any reason to bring the action, the administrator may institute such action on behalf of the United States within such one year period . . ."

The Act also provides, after providing for registration of premises,

> "If the landlord fails to file a proper registration statement within the time specified . . . the rent received for any rental period commencing on or after the day of first renting . . . shall be received subject to refund to the tenant of an amount in excess of the maximum rent which may later be fixed under section

> 5(c). Such amount shall be refunded to the tenant within thirty days after the issuance of the order . . . The foregoing provisions and any refunds thereunder do not affect any civil or criminal liability provided by the Act for failure to file the registration statement required by section 7 . . .
>
> In the circumstances enumerated in this section, the administrator may issue an order changing the maximum rents otherwise allowable or the minimum services required."

It is noteworthy that in the Act there is no provision whatsoever for the rent administrator to make a retroactive order and as above pointed out, since the rent administrator is purely a statutory creature, he can only perform such acts, and enter such orders, and impose such conditions only as authorized by statute.

All the administrator may do under the statute is to establish a maximum rental, except that the administrator is granted discretion to relieve the landlord of a duty to refund if he finds that the landlord was not at fault in failing to register. In other words, where a landlord fails to register within the time prescribed by the regulation, the administrator is given the right and discretion to make two determinations: first, the maximum rental; and second, that the landlord was or was not justified in failing to register. If he determines that the maximum rental as registered was incorrect in that it was too high, he is authorized to fix a maximum rental. If he determines that the landlord was not at fault, then he may provide that no refund for rentals is required to be made by the landlord; *and that is the extent to which he may go.*

Thus we see that the rental regulation act has two provisions. One, that when a landlord collects rent and does not register the property within the time prescribed by statute that he takes such rent subject to a refund to the tenant of any overcharge which may ultimately be determined by the director, and the right of the director to establish a maximum rental. Nowhere in the act is there an express provision for the rent director specifically to make a retroactive finding or order a refund.

Since the O.P.A. regulation is in derogation of the rights of the landlord, the rule of law is that such regulation must be strictly construed. In bringing action for treble damages under the regulation act, there is a distinction, as was pointed out by the trial court, between the tenant bringing an action and the ~~landlord~~ director bringing an action.

Under the Act dealing with the statute of limitations, being U.S.C.A. 50, A.P.P. 925 (e) (cited as 205(e)), if a landlord renting premises violates a regulation, order or price schedule, the tenant may within one year from the date of the occurrance of the violation bring an action against the landlord on account of the overcharge. This must be read together with that portion of the Act which provides that if a landlord fails to file a proper registration statement, *the rent received commencing on or after the date of the first renting* shall be received subject to the refund to the tenant of any amount in excess of the maximum rent which may later be fixed by the order of the rent director. Thus, if a landlord collects rent at a time when the property is not registered, he does so at his peril, and in the event that the rent director subsequently reduces the rental, and the landlord does not refund the excess within thirty days after the maximum rental is fixed, he

subjects himself to a suit by the tenant. While the tenant cannot bring his action until thirty days from the date of the setting of the maximum rent by the director, nevertheless, as soon as the thirty day period expires he may bring his action. A reading of the entire act clearly discloses the intent of Congress to be that a suit may only be instituted for one year's rental prior to the bringing of the suit.

In the instant case, the order of the director finding the maximum rent was made June 28, 1945. The action could have been brought by the Director July 28, 1945. Had he brought such action, he could have instituted proceedings to cover all the rental overcharge. And, reading the entire Act, it becomes apparent that when Congress referred to a violation, they did not mean the violation of the refund provision of the Act, but rather the violation in collecting an amount exceeding the maximum rental.

The Act authorizing the administrator to bring the action limits the action to within the same year as the tenant might have brought his action.

It becomes apparent that the use of the word "violation" in the Act has two meanings. One is the violation of the final order establishing the maximum rental for the property, for the purpose of establishing the date within which the action may be commenced, and one meaning is the collection of the overcharge for the purpose of establishing the amount upon which a suit may be predicated, so that at the time the suit is instituted, the only rents which may be recovered are those rents which may be collected within the one year period prior to the commencement of suit. The trial court recognizes this distinction when he says: (R. 63, 64)

". . . The court agrees with plaintiff, therefore, that the violation of the order did not occur until July 30, 1945.

It does not follow, however, as plaintiff seems to contend, that the '. . . overcharge or overcharges upon which the action is based . . .' U.S.C.A. 50 App 925 (e) occurred, therefore, on July 30, 1945. The defendant did not on July 30, 1945 make an overcharge of $270.00. U.S.C.A. 50 App. 925 (e) defines overcharges as 'the amount by which the consideration exceeds the applicable maximum price . . .'. The applicable maximum price as prescribed by the order of June 29, 1945 was $45.00 per month. The true situation, therefore, was that on June 29, 1945 the Office of Price Administration determined that the rent should have been $45.00 per month, thus determining that there had been an overcharge of $30.00 for each month. It is well-settled that this Court has no jurisdiction to consider the validity of such an order.

It is upon overcharges of $30.00 per month that the action is based, not on a single overcharge of $270.00. Plaintiff is here seeking to recover damages under U.S.C.A. 50 App. 925(e). That section '. . . establishes the sole means . . . whereby the Administrator on behalf of the United States may seek damages in the nature of penalty'. Porter vs. Warner Holding Company ..... U.S. ...., slip sheet opinion dated June 3, 1946, 14 L.W. 4383. The evident plan of that section is to give a right to damages for each overcharge. Gilbert vs. Thierry, 58 F. Supp. 235 and authorities cited therein. The trouble with plaintiff's position is that it confuses the obligation of the landlord to refund, or make restitution, with the obligation to respond in damages. The former obligation exists only by virtue of Section 4(e) of the Rent Regulation for Housing. U.S.C.A. 50 App. 925(e) imposes no obligation to refund or make restitution but only to respond in damages under certain conditions. It may well be that by virtue of the holding of the Supreme Court in

Porter vs. Warner Holding Company, supra, plaintiff could enforce such a refund order by appropriate action under Section 925(a). This action, however, is based on Section 925(e) and 'The time limitation expressed in 205(e) 925(e) operates as a limitation of the liability itself as created . . .'. Bowles vs. American Distilling Company, 62 F. Supp. 20, 22. For this reason the Court has jurisdiction to award damages under Section 925(e) only as to overcharges occuring one year prior to the filing of the action, Bowles vs. Gulf Refining Company, 61 F. Supp. 149; Bowles vs. American Distilling Company, supra; Thompson vs. Taylor, 62 F. Supp. 930. Plaintiff is entitled to recover, therefore, only for the three months of February, March and April of 1945."

And the Circuit Judges in the Opinion also recognized the distinction, when they said, (R. 75,76):

"The principal legal question presented is whether the one-year statute of limitations provided by the Act commences to run from the time of overcharge, as held by the District Court, or from the time of the failure to refund, as contended by the Administrator.

We think the judgment of the District Court is clearly correct. Section 205(e) is 'the sole means whereby individuals may assert their private right to damages and whereby the Administrator on behalf of the United States may seek damages in the nature of penalties.' Porter v. Warner Holding Co., 328 U.S. 395, 401, 402.

Read in the ordinary sense, as applied to the payment of rent, No. 205(e) plainly provides that each separate overcharge is the violation referred to. Each separate overcharge is certainly a violation of the regulation or order 'prescribing a maximum price,' and each separate overcharge gives rise to a cause of action for the violation. Gilbert v. Thierry, 58 Fed. Supp. 235 (D.C. Mass.), affirmed, Thierry v. Gilbert, 147 Fed. (2d) 603, 604 (C.C.A. 1). There is no merit in

the contention that the violation upon which this cause of action is based is the failure or refusal to make the refund. Such a failure or refusal is a violation of No. 4(e) of the Rent Regulation for Housing, and if a refund order is issued by the Administrator, it is a violation of the order; but such failure or refusal is not the violation specified in No. 205(e), which is the violation of the 'maximum price regulation' or order. To causes of action based on these overcharges, since they are violations under No. 205(e), the one-year statute of limitations applies.

The action was filed February 1, 1946, and recovery here, under the court's findings as to wilfulness and negligence, was limited to overcharges occurring in the twelve months beginning February 1, 1945. But during this time overcharges were made only in three months, February, March, and April 1945, and the court properly entered judgment for $90.00, the aggregate amount of the overcharges for those three months. Since the overcharge for each month constituted a separate and distinct violation (Thierry v. Gilbert, supra), the Administrator was not authorized to cumulate the separate overcharges of the months preceding February 1, 1945, together with the succeeding months, into a total of $270.00, and recover for that amount.'

11. Counsel for petitioner argue in their Petition (pp. 12, 13) that a landlord might benefit by his own wrongdoing, but, even under the ruling of the Circuit Court of Appeals, the rent director could have insituted the instant action on July 28, 1945, and held respondent to liability to pay all the rentals wrongfully collected under the Rent Director's reduction of maximum rental, and respondent should not be accountable to the delay in the institution of the suit by the Rent Director. This argument is applicable to all actions barred by any statute of limitations.

Furthermore, every tenant can always apply to the rent director for information as to whether a premise is registered, and if it is not registered, the rent director can make a timely recommendation as to rental, thus coming within the statute of limitation.

CONCLUSION

For the reasons above set forth, respondent respectfully submits that the Writ of Certiorari should not be granted.

Respectfully submitted,

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OCTOBER TERM, 1947

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Petitioner,

v.

CHARLES STONE,
Respondent.

BRIEF OF RESPONDENT

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BRIEF OF RESPONDENT

MATTER ACCEPTED

Petitioner's statement as to the jurisdiction of this court and as to the statute and regulation involved are accepted.

QUESTION PRESENTED

Respondent agrees that the question to be presented is as stated in Petitioner's Brief.

STATEMENT

Respondent accepts the statement as set forth in Petitioner's Brief, suggesting, however, the following addition:

The premises were not registered for the reason that respondent did not believe that he was required to register them under the rules and regulations, claiming that there was no rental agreement.

SPECIFICATION OF ERROR TO BE URGED

Respondent accepts the specification of error to be urged as set forth in Petitioner's Brief,, claiming, however, that there was no error.

Note: It was the position of respondent in the Circuit Court of Appeals that the Rent Director had no authority to make a retroactive order; however, in view of the ruling of the Supreme Court that certiorari was granted only for the purpose of testing out the legal question as to the statute of limitations, we do not in this brief urge the question. If this court would desire or accept argument on the question, respondent would like to brief the question for the court.

SUMMARY OF ARGUMENT

A reading of the Act, giving the ordinary meaning to the words of the Act, without attempting to strain them, clearly indicates that when the Legislature limited the bringing of an action "within one year from the date of the occurrance of the violation * * * on account of the overcharge," they meant the limitation period to begin to run from the time of the overcharge, or the actual taking of the rent, and did not mean to provide different meanings to the words "overcharge" and "violation," the word "overcharge" meant to define the word "violation".

ARGUMENT

(Emphasis herein is always ours unless otherwise indicated)

SEC. 205(e) OR 925(e) OF THE EMERGENCY PRICE CONTROL ACT CLEARLY INDICATES THAT THE WORDS "VIOLATION" AND "OVERCHARGE" ARE SYNONOMOUS, ONE DEFINING THE OTHER

Section 205(e) or 925(e) of the Emergency Price Control Act involved in this case, as applicable, reads as follows:

> "If any person *selling* a commodity violates a regulation order or price schedule prescribing a maximum price the person who buys such commodity * * * *may within one year of the date of the occurrence of the violation* * * * bring an action against the seller on account of the *overcharge* * * * that the judgment shall be not more than three times the amount of the overcharge, or overcharges * * * for the purposes of this section the * * * *receipt of rent* for defense * * * housing shall be deemed the * * * *selling of a commodity* * * * Overcharge shall mean the amount by which the consideration exceeds the applicable maximum price. (Rent)".

In this case, we are dealing with *"the receipt of rent"*. So the term in the statute "maximum price" is changed to "maximum rent," and the word "price" is changed to "rent". This statute gives a *right of action only,* as stated in said statute, *"on account of the overcharge."* The first question is, how and when does the overcharge occur? The obvious answer, from the statute when read in the ordinary sense, is, by and when a person *receiving rent* violates (note present tense) a regulation, order or rent schedule *"prescribing a maximum rent."* In other words, when a person receives rent *over* the rent permitted, he is guilty of "the violation" of the "maximum rent" regula-

tion, order or schedule; and it is this violation which causes and/or results in the overcharge. The refund order in question here does not prescribe a maximum rent, so its violation does not and cannot cause and/or result in "the overcharge".

The Administrator complicates the statute by his confused construction of what is meant by the phrase in the statute, "The date of the occurrence of the violation". This phrase can only mean the date when the violation occurs, the date when a person receives rent in excess of the permitted maximum rent, which causes the overcharge of rent, and that is the sole basis of this action. The Court, in the case of *Porter vs. Stone,* 72 Fed. Supp. 306 clearly and succintly recognized this argument, when they said:

> "It is upon overcharges of $30.00 per month that the action is based, not on a single overcharge of $270.00. Plaintiff is here seeking to recover damages under U. S. C. A. 50 App. 925(e). That section '* * * established the sole means * * * whereby the Administrator on behalf of the United States may seek damages in the nature of penalty.' *Porter vs. Warner Holding Company,* 328 U. S. 395. The evident plan of that section is to give a right to damages for each overcharge. *Gilbert vs. Thierry,* 58 F. Supp. 235 and authorities cited therein. The trouble with plaintiff's position is that it confuses the obligation of the landlord to refund, or make restitution, with the obligation to respond in damages. The former obligation exists only by virtue of Section 4(e) of the Rent Regulation for Housing. U. S. C. A. 50 App. 925(e) imposes no obligation to refund or make restitution but only to respond in damages under certain conditions. It may well be that by virtue of the holding of the Supreme Court in *Porter vs. Warner Holding Company,* supra, plaintiff could enforce such a refund

order by appropriate action under Section 925(a). This action, however, is based on Section 925(e) and 'the time limitation expressed in 205(e) 925 (e) operates as a limitation of the liability itself as created * * *' *Bowles vs. American Distilling Company*, 62 F. Supp. 20, 22. For this reason the court has jurisdiction to award damages under Section 925(e) only as to overcharges occurring one year prior to the filing of the action. *Bowles vs. Gulf Refining Company*, 61 F. Supp. 149; *Bowles vs. American Distilling Company*, supra; *Thompson vs. Taylor*, 62 F. Supp. 930. Plaintiff is entitled to recover, therefore, only for the three months of February, March and April of 1945."

The one year period here is a statute of creation and not a statute of limitation. It is an inherent part of the right to sue at all. This contention is fully discussed in *Makeny vs. Porter*, 158 Fed. 2nd, ~~393~~ 478

Carmady vs. Hanson, 43 Atlantic 2d, 685.

Midstate Horticultural Corp. vs. Penn Ry., 320 U. S. 356.

Bowles vs. American Distilling Company, 62 Fed. Sup. 20.

Bowles vs. Olsen, 151 Pac. 2nd 723.

Creedon vs. Stone, 168 Fed. 2nd 393, affirming *Porter vs. Stone*, 72 Fed. Sup. 306.

Makeny vs. Porter, 158 Fed. 2nd 478, supported by decisions from the U. S. Supreme Court cited therein.

Thompson vs. Taylor, 62 Fed. Sup. 630.

34 American Juris 17, and numerous cases cited.

CONTENTION OF PETITIONER

Petitioner contends in its brief that the decision of the lower court affords a benefit to those who compound their violation by failing to file a registration statement, and would allow "a wrongdoer to benefit by his own wrong", arguing that a landlord could fail to register and collect rent in excess of the maximum allowable rent, and then avoid repayment of the overcharge, if he could conceal the lack of registration for a period of a year.

This contention is unsound for the reason that every tenant under the Act could very easily check the registration, or notify the rent director that the property was not registered.

We must bear in mind that the Act provides:

> "'If a landlord fails to file a proper registration statement within the time specified * * * the rent received for any rental period commencing on or after the date of the first renting * * * shall be received subject to refund to the tenant of any amount in excess of the maximum which may later be fixed by an order under section 5(c). Such amount shall be refunded to the tenant within thirty days after the date of the issuance of the order * * *"

Obviously, the tenant or the rent director could very seasonably check the registration and institute proceedings either by the tenant or the director to recover the refund.

MAXIMUM RENT ORDER

We are met with the contention that the overcharge did not occur on the date when the rent was received because

there was no regulation, order or rent schedule permitting and/or prescribing a "maximum rent" in effect on that date. This contention is answered by the fact that the administrator pursuant to rent regulation 5.C.1. made a maximum rent order *retroactively effective* from March 1, 1944, since which date all rent herein was received. Now, if this order is valid, and effective, and appellant contends it is, said maximum rent order was in effect while all the rent herein was received. It is the violation of this effective retroactive maximum rent order that gives rise to the overcharges of $30.00 per month, which is the basis of this action.

THE REFUND ORDER

When the administrator made his retroactve rent order under regulaton 5.C.1, he made a further order, a *refund order* under regulation 4.E. It is obvious that this refund order does not prescribe a maximum rent, and therefore its violation does not create an overcharge, and 925(e) does not provide for the enforcement of this refund order. The action here is not one to enforce *the refund order*.

By section 925(e), Congress vested our courts with exclusive jurisdiction to construe said section and enforce the respective rights of parties litigant under it, to determine the extent of the overcharges and whether treble damages should be imposed. By regulation 4.E., the administrator vests himself with the power in his discretion to forgive all penalties and all overcharges, and to extend the one year period and create a new liability not provided for in the statute, viz: That all *overcharges found due* by him from August 1, 1944, the time of the first effective rent date, wthout penaltes be repaid, as between 925(e) of the statute, and regulation 4.E., 925(e) must prevail.

THE ONE YEAR PERIOD RUNS FROM THE TIME RENT IS PAID

When 925(e) was first enacted in 1942, Congress showed its specific intent by specifically providing therein that suit shall be instituted "within one year after the delivery is completed or *rent is paid.*" In the amendment of 1944, the latter quoted phrase was changed to read, "within one year of the date of the occurrence of the violation." The evident purpose of the change was to include in one statement both a sale and rent, since these words are made synonymous by the statute. If Congress does not so specifically provide the language of the statute as amended clearly shows that the one year period was to run from the date of the overcharge when the person receives rent over the rent permitted. The report of the Senate Committee on Banking and Currency, whch reported the 1944 amendment and ts purpose, Sen. Rep. No. 922, 78th Congress, 2d Session, Page 3, being silent on the question, shows that Congress in the 1944 amendment had no intent to change its original intention that the one year period runs from the date when rent is paid.

THE CONFLICT IN THE DECISIONS

Petitioner cited the greater number of decisions in its favor, and claims the weight of authority. These decisions, all but two, are by United States District Courts.

Creedon vs. Stone, 163 Fed. 2d, 393, Sixth Circuit, was decided before *Creedon vs. Babcock,* 163 Fed. 2d, 480. However, *Creedon vs. Stone* was not cited in defendant's briefs or considered, in *Creedon vs. Babcock.* The Babcock decision relied on the authority of *Porter vs. Butts,*

68 Fed. Supp. 516, and *Parkham vs. Clark,* 68 Fed. Supp. 17, both of which cases arose in the Sixth Circuit and were already overruled and no longer the law by reason of the decision in *Creedon vs. Stone,* Sixth Circuit.

Porter vs. Butts is cited in all the decisions. It was published. *Porter vs. Stone,* 72 Fed. Supp. 306, was decided before *Porter vs. Butts,* but was not published until after the decision in *Creedon vs. Stone,* and *Creedon vs. Babcock.* In weighing the decisions there are some practical considerations. The defendants involved in these cases are small fry, and because of the trivial amount of money involved ranging well under $500.00, for instance, $270.00 in the Stone case and $360.00 in the Babcock case, it is reasonable to assume that these defendants could not afford to adequately compensate counsel to spend the necessary time to analyze this new legislation and efficiently present the defendant's case to the Courts. On the other hand, the Administrator was well equipped with a competent, paid legal staff with sufficient time to analyze the legislation and efficiently present the administrator's view points thereon. This undoubtedly was a factor in many of the decisions and it is reasonable to assume that one decision begets another. Once the Butts case was decided, it became and was cited as authority.

PETITIONER'S ARGUMENT

Petitioner presents a confused argument as to the difference between the words "violation" and "overcharge" as used in the statute, viz: that "violation" was used as indicating the point from which the statute begins to run, and "overcharge" as indicating the basis for the partial measure of damages in the action. This is a meaningless

argument. The action here is "on account of the overcharge".

Much of Petitioner's confusion arises in an attempt to apply the one year period as an ordinary statute of limitations, that the time could not start to run against an action until the action could be instituted. However, the one year period here is not a statute of limitations. It is an inherent part of the right to sue, *"the commencement of the action within the time is an indispensible condition of the liability * * * when the period fixed by its terms has run, the substantive right and the corresponding liability end."* *Makeny vs. Porter,* 158 Fed. 2nd, 478.

At this point we desire to call the attention of the court to the language of section 205(e) or 925(e), paraphrased to suit the instant case, which reads:

> "If any person renting premises violates a regulation, order or rent schedule *prescribing a maximum rental,* the tenant may within one year of the date of the occurrence of the violation * * * bring an action against the seller on account of the overcharge."

From the time of the issuance of the refund order in the instant case, no rental was accepted by the respondent in excess of the reduced rental prescribed by the refund order. Respondent did not violate a "regulation, order or price schedule *prescribing a maximum price* (rental)." The only violation, if any, of which respondent may have been guilty, is that he did not refund any rent previously collected. This was not a maximum price regulation. In this connection we must bear in mind that even under respondent's interpretation of the law, the tenant could have brought his action on June 29, 1945, and recovered the full amount of the overcharge (assuming the rent di-

rector had authority to make such a retroactive refund order, which is denied); and if it were determined that the failure to register was willful, could have recovered treble damages; or the director could have instituted proceedings on July 29, 1945, *and still recovered the full amount of the overcharged rent.* Certainly because the rent director chose to wait from July 29, 1945 until February 1, 1946, to institute proceedings, does not warrant penalizing respondent.

It must be borne in mind that this action by the director under section 4.E. of the Act is for the benefit of the government, as damages in the nature of a penalty; *Foster vs. Warner Holding Company,* 328 U. S. 395, 401-402; and is not for the benefit of the tenant, for the tenant would receive no part of the recovery, if any. A reading of the entire Act would indicate it was primarily for the benefit of the tenant, to prevent rent gouging, and when Congress authorized the institution of proceedings for the recovery of excess rental, they were primarily concerned with the rights of the tenant, and never intended to pass legislation which would bring money into the coffers of the United States Treasury. This was not a money raising enterprise for the Treasury.

CONCLUSION

We therefore respectfully submit that the one year period runs from the date when rent is paid and/or received; when rent is received over the amount permitted; when the overcharge is made. That from the time of the refund order, no excess rental was paid to or received by respondent. That the violation of the refund order, in the language of *Creedon vs. Stone,* "is not the violation

specified in 205(e)". That the decision herein should be affirmed.

Respectfully submitted,

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ADDENDUM

After writing this brief, the case of *Markbreiter et al vs. Woods, Acting Housing Expediter,* 163 F. 2d 993, decided in the United States Emergency Court of Appeals on November 6, 1947, was called to our attention. In that case, the Emergency Court of Appeals held that a rent director's order fixing rental and making same retroactive was invalid and void.

This order was made on the initiative of the rent director.

It is true that the order in this case was not made because the landlord had failed to register, but was brought under section 5(d) of the rent regulation. Nevertheless, the court said that such retroactive order was invalid for the reason that section 5(d) of the rent regulation does not authorize the administrator to fix maximum rents retroactively. The same reasoning should apply to the instant case, inasmuch as there is nothing in the Act as it applies to the instant case which authorizes the rent director to make a retroactive order.

It is true that by the limitation of the Supreme Court in granting certiorari, as we pointed out in our brief, the only question to be determined on this hearing is the effect of the statute of limitations. Nevertheless, we feel that this case should be called to the attention of this court in the event the court wishes to consider it.

No. 392

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1947.

FRANK R. CREEDON, HOUSING EXPEDITER, OFFICE OF THE HOUSING EXPEDITER, PETITIONER,

v.

CHARLES STONE, RESPONDENT.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT.

MOTION FOR LEAVE TO FILE A BRIEF AMICUS CURIAE AND BRIEF OF AMICUS CURIAE

NORMA L. COMSTOCK,
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IN THE

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MOTION FOR LEAVE TO FILE A BRIEF AMICUS CURIAE

The undersigned member of the Bar of this Court moves that leave be granted to file a brief *amicus curiae* herein for these reasons:

The point to be presented and argued in this brief of *amicus curiae* was never presented to or considered by either of the lower courts. That point is: The Housing Expediter has pursued in this case and many others, and obviously intends to continue to pursue, a remedy which does not exist where, as here, the basis of suit is a violation of an order to refund rent, and has thereby forfeited the rights of tenants to have the refunds paid to them, in that he has been prosecuting actions on behalf of the United States for treble damages, payable exclusively into the United States Treasury, under Section 205(e) of the Emergency Price Control

Act, when in fact the only remedy available is an action by the Housing Expediter under Section 205(a) of the Act by way of restitution or refund for the benefit exclusively of the aggrieved tenant.

The matter is of vital importance in that the courts have erroneously assumed, without actually considering the matter at all, that a treble damage action on behalf of the United States is an available remedy, and by so doing have forfeited the rent refund rights expressly granted to tenants by Section 4(e) of the Rent Regulation for Housing.

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IN THE

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FRANK R. CREEDON, HOUSING EXPEDITER, OFFICE OF THE HOUSING EXPEDITER, PETITIONER,

v.

CHARLES STONE, RESPONDENT.

BRIEF OF AMICUS CURIAE

Amicus curiae respectfully suggest that the judgment of the Circuit Court of Appeals should be reversed and be remanded with instructions to order dismissal of this action for the reason that a failure to obey a refund order issued under Section 4(e) of the Rent Regulation for Housing, as amended (8 F.R. 14663, 10 F.R. 3436), *not* prescribing a maximum rent, but issued simply as an adjunct to a separable rent deduction order issued under a different section, 5 (c)(1), of the Regulation, does not give rise to a claim for relief under Subsection (e) of Section 205 of the Emergency Price Control Act of 1942 as amended (56 Stat 23, 33, 50 U.S.C. App. 925; 58 Stat. 632, 640, 50 U.S.C. App. Supp. V, 925), in either the tenant or in the Housing Expediter, as successor to the Price Administrator; but gives rise only to a proceeding by the Housing Expediter under Subsec-

tion (a) of Section 205 of the Act to secure a judgment of restitution or refund against the landlord for the sole use and benefit of the tenant.

MATTER ACCEPTED

Petitioner's statements as to the jurisdiction of this Court and as to the statute and regulation involved are accepted. It is also conceded that a refund order may be validly issued as an adjunct to a rent reduction order, although it can be enforced only by a proceeding under Subsection (a) of Section 205 of the Act.

QUESTION PRESENTED

The sole method of enforcement of a refund order issued under Section 4(e) of the Rent Regulation for Housing is a proceeding by the Housing Expediter under Section 205(e) of the Act to compel a refund of the ordered amounts to the tenant, for whose exclusive benefit such refunds were contemplated by the Regulation and whose interests are forfeited when an action is instituted on behalf of the United States under Section 205(e) of the Act.

It is the position of *amicus curiae* that no question of a statute of limitations is involved.

STATEMENT

Petitioner's statement of the case is accepted, but it is suggested that the particular facts in this case present a flagrant example of defiance of the Act and the Regulation, and that consideration should be given by the Court to the fact that its decision herein may well affect a landlord whose failure to make timely filing under Section 7 of the Regulation was due to lack of actual knowledge of the registration requirement, or one whose filing was but a few days late, but against whom the Price Administrator or the Housing Expediter, as the case may be, nevertheless determined to supplement the rent reduction order by a refund order.

Attention is directed to the facts that: (1) In reducing a first rent under authority of Section 5(c)(1) of the Rent Regulation, the sole permissible test is whether such first rent is "higher than the rent generally prevailing in the

Defense-Rental Area for comparable housing accommodations"; (2) a failure of the landlord to make timely registration is *not* a ground for rent reduction, and (3) if the landlord has failed to register at all, as in this case, but the first rent in fact is not "higher than the rent generally prevailing in the Defense-Rental Area for comparable housing accommodations," the sole remedies against the landlord for failure to register are the injunctive and criminal sanctions provided by Section 205(a) and Section 4 of the Act and specifically reserved by the Administrator in the last sentence in Section 4(e) of the Rent Regulation.

Attention is further called to the fact that the Rent Regulation notifies the tenant only of his right to a refund and does not mention a suit for treble damages under Section 205(e), and to the fact that a suit by the Housing Expediter on behalf of the United States forecloses any relief to the tenant. *Section* 205(*e*).

SPECIFICATION OF ERROR TO BE URGED

The Circuit Court of Appeals erred in assuming that a claim for relief existed under Section 205(e) of the Emergency Price Control Act of 1942, as amended, because of failure to obey a refund order issued under Section 4(e) of the Rent Regulation for Housing. The District Court should have been instructed to dismiss the action.

SUMMARY OF ARGUMENT

An order issued under Section 4(e) of the Rent Regulation commanding the refund to the tenant of rent amounts which were legal when charged and collected is merely a separable and optional adjunct to a rent reduction order issued under Section 5(c)(1) of such Regulation, and is not an order "prescribing" a maximum rent within the scope and intendment of Section 205(e) of the Emergency Price Control Act of 1942, as amended. Section 205(e) is penal in character, and the Price Administrator was without power to visit penal consequences upon an act which was lawful when done. A refund can be enforced only in an action for the benefit of the tenant under Section 205(a) of the Act.

ARGUMENT

In none of the reported federal decisions in like cases, and specifically in neither the instant case (163 F.2d 393) nor in *Creedon v. Babcock*, 163 F.2d 480 (C.C.A. 4th, 1947) does the point now raised by *amicus curiae* appear to have been presented or considered. Nor is it presented by either petitioner or respondent here. The matter considered in all of such reported decisions was solely the question of when the statute of limitations began to run. Those courts simply assumed the fallacious premise that disobedience of a refund order created a claim for treble damages under Section 205 (e) of the Act, and from that springboard carried on to conclusions sharply tangential to the true inquiry. A clear and dispositive statement of the true question and answer is found in the opinion in *Fleming, Administrator v. Banks*, decided October 3, 1947, by the Appellate Department of the Superior Court, Los Angeles, California. A true copy of the opinion, which is not yet reported, is printed as Appendix A hereto.

The Scope of Section 205(e) of the Act

Section 205(e) of the Emergency Price Control Act of 1942, as amended, provides, as far as material to this argument, as follows:

> "If any person selling a commodity violates a regulation, *order*, or price schedule *prescribing* a maximum price or maximum prices * * * the person who buys such commodity * * * may * * * bring an action against the seller on account of the *overcharge* * * * For the purposes of this section the payment or receipt of rent shall be deemed the buying or selling of a commodity, as the case may be; and the word 'overcharge' shall mean the amount by which the consideration *exceeds* the *applicable* maximum price. * * *" (Emphasis supplied).

It is evident that the only "overcharge" that will sustain an action under Section 205(e) of the Act is a charge that "exceeds" the maximum price "applicable" at the instant it is made. It is also evident that the violation must be of an order "prescribing" a maximum price.

The initial inquiry is as to what was the maximum rent *prescribed* by regulation or order on the dates the rents in question were demanded or received. These housing accommodations concededly having been rented for the first time after the effective date of the Rent Regulation, the matter is controlled by Section 4(c) of such Regulation, which provides that in such case the "Maximum rents (unless and until changed by the Administrator as provided in Section 5) shall be: * * * the first rent * * *. The Administrator may order a decrease in the maximum rent as provided in Section 5(c)."

Accordingly, the *legal* maximum rent *prescribed* by the Regulation was the *first rent,* and that figure continued to be the allowable rent unless and until changed by the Administrator. When the landlord collected that first rent and like amounts on succeeding rental dates, no reduction having been ordered, he could not conceivably have been violating a regulation *prescribing* a maximum rent.

Effect of Failure to Register First Rent

Section 7 of the Rent Regulation required the landlord to register that first rent within 30 days, and provided that if he failed to do so "the rent received for any rental period commencing on and after the date of the first renting * * * shall be received *subject to refund to the tenant* of any amount in excess of the maximum rent which may later be fixed by an order under Section 5(c)(1). Such amount shall be refunded to the tenant within 30 days after the date of the issuance of the order. If the Administrator finds that the landlord was not at fault in failing to file a proper registration statement within the time specified, the order under Section 5(c)(1) may relieve the landlord of the duty to refund." It was optional, therefore, with the Administrator whether the landlord should make refund even though the maximum rent might be reduced, and even though registration was not timely made.

But by failing to register within the 30-day period, the landlord, despite the fact that he had violated Section 7 of the Regulation, did not automatically become liable to refund anything. Such a liability accrued only if and when the Ad-

ministrator, acting under Section 5(c)(1), ordered a decrease of the first rental amount on the ground that it was "higher than the rent generally prevailing in the Defense-Rental Area for comparable housing accommodations on the maximum rent date." If the first rent was not excessive within that definition it remained the legal maximum rent, and there was nothing to refund. If it was not excessive and the landlord had failed to register at all, the Administrator, to secure compliance with Section 7 of the Regulation, had his injunctive remedy to compel registry under Section 205 (a) of the Act and could seek the criminal sanction created by Section 4 of the Act. If it was excessive, but the Administrator believed the failure to register in apt time was not the landlord's fault, he need not order a refund.

Scope of a Rent Reduction Order

Petitioner consistently refers to "retroactive rent reduction orders." This is misleading in its implication that an indivisible order reducing the rent and ordering a refund is issued. The rent reduction order and the refund order are distinctly separable in character and effect even though they be combined in one instrument. They stem from separate sections of the Regulation. The right to issue a rent reduction order depends exclusively upon a comparison of the first rent with "the rent generally prevailing in the Defense-Rental Area for comparable housing accommodations on the maximum rent date." The right to issue a refund order, on the other hand, exists only if there has not been a timely registration of a first rent.

The legal basis for a rent reduction order must exist before a refund order can come into existence. But the converse is not true, for a rent reduction order can validly issue whether or not there is any legal basis for a refund order. A refund order definitely is not an order "prescribing" a maximum rent. It is simply an optional adjunctive order the existence and validity of which depend upon another order, a rent reduction order.

A rent reduction order is an order "prescribing" a maximum rent, but it is prospective, not retroactive, in essence, scope and intent. When such an order is issued, the reduced

rent specified therein supersedes the first rent as the maximum rent, but the newly fixed rent does not become effective until the next rent payment date. If thereafter the landlord charges more than the new figure, he is, of course, violating an *order* prescribing a maximum rent, just as he would have been violating a *regulation* prescribing a maximum rent had he collected more than the first rent in the succeeding rental period.

But when a landlord violates a refund order, he is not violating an order prescribing a maximum rent, for such an order does not *prescribe* any figure. It merely uses the figure prescribed by the rent reduction order as a basis for calculation of the amount of refund.

Enforcement of Refund Provision

The refund provisions of Section 4(e) of the Rent Regulation can be justified only as an exercise of the right granted the Price Administrator by Section 2(g) of the Emergency Price Control Act to include in regulations, orders and requirements under the Act "such provisions as the Administrator deems necessary to prevent the circumvention or evasion thereof."

In stipulating in the Rent Regulation that if he did not make timely registration of his first rent and if the same was thereafter reduced by order under Section 5(c)(1), the landlord might be required to make refund, the Administrator was exercising that right.

But he was also giving public notice to landlords of what their liability, and its extent, might be, and he made no mention of the imposition of damages in the nature of penalties. The Administrator was as firmly bound by his regulation as were landlords. See *M. Kraus & Bros. v. United States*, 327 U.S. 614, 621, as applied in *Porter v. Block*, 156 F. 2d 264, 269-270 (C.C.A. 4th, 1946), and compare the concurring opinion of Magruder, J., in *Senderowitz v. Clark*, 162 F.2d, 912, 918 (E.C.A., 1947). He could not, therefore, inform landlords that the late registrations would subject them only to refunds, and thereafter seek to penalize them in three times the amount of the refunds. When, as here, petitioner brings suit on behalf of the United States under Section 205(e) of

the Act, he is seeking "damages in the nature of penalties," *Porter v. Warner Holding Co.*, 328 U.S. 395, 401-402, and he is unlawfully attempting to make that penal which was not penal when done, since the first rents were lawful when collected. This he cannot do by regulation, by order, or by interpretation; he cannot enlarge Section 205(e). *Morrill v. Jones*, 106 U.S. 466; *United States v. Eaton*, 144 U. S. 677; *Porter v. Block*, 156 F.2d 264, 269-270 (C.C.A. 6th, 1946); *Bowles v. Griffin*, 151 F.2d 458, 461 (C.C.A. 5th, 1945). Significantly enough, the Administrator never sought certiorari in the Block and Griffin cases.

That the Administrator, when writing the Rent Regulation, did not consider that a refund order "prescribes" a maximum rent so as to make disobedience of it a violation within the terms and intendment of Section 205(e) of the Act is shown by Section 4(e) of the Rent Regulation itself, for it says that the refund shall be of "any amount in excess of the maximum rent which may *later be fixed* by an *order* under Section 5(c)(1)," and *not* of any amount in excess of the maximum rent *fixed* by the refund order itself.

Petitioner would read into Section 205(e) of the Act something that is not there. On page 9 of his petition for a Writ of Certiorari he says that the section "clearly gives a course (cause) of action to a tenant or to the Administrator for a violation of a regulation or order prescribing a maximum rent *resulting in an overcharge.*" (Italics his). The difficulty is that the words "resulting in an overcharge" do not appear in Section 205(e). Even if they did, however, they would refer only to the rent reduction order, not the refund order, for it is the reduction order alone which could both (1) "prescribe" a maximum rent and (2) *result in an overcharge.* Both these factors must appear in the equation thus stated by petitioner, and a failure to obey a *refund* order does not contain both, even if it be assumed, *arguendo*, that the order results in an overcharge.

The gist of the violation charged here is violation of the refund order, not violation of the rent reduction order. There could be no violation of the latter order retroactively. Before petitioner's theory could be sound, it would be necessary for Section 205(e) of the Act to provide that if any

person selling a commodity violates a regulation or order prescribing a maximum price, *or an order based on any such regulation or order* and an overcharge results, a treble damage suit will lie. But neither the Administrator nor this petitioner could enlarge the penal terms of Section 205(e). *Morrill v. Jones, supra,* 106 U.S. 466; *United States v. Eaton, supra,* 144 U. S. 677.

The *penal* liability of the landlord, as distinguished from his liability to refund, must be determined by the circumstances existing *at the time* he collected the rents in question. At that time he was complying with a regulation prescribing that his maximum rent should be the first rent charged, and he was in violation of no regulation or order prescribing a maximum rent. To be sure, he was required to register such rent figure within 30 days thereafter, but his failure to do so could not place him in the position of violating an order prescribing a maximum rent, since his legally allowable rent continued to be the first rent. It might so continue during the entire period of rent control if it did not exceed "the rent generally prevailing in the Defense-Rental Area for comparable housing accommodations on the maximum rent date." (Rent Reg., sec. 5.). And this would be true regardless of whether a registration statement was filed in apt time, or at all.

Therefore, since at the time the rent collections in question were made, they were made in *conformity* with a regulation prescribing a maximum rent and were not made in violation of an existing order prescribing a lower maximum rent, the landlord could not be subjected to civil penalties. His sole liabilities were to refund, and, if his failure to register was wilful, a criminal prosecution.

Analysis of Retroactive Pricing Order Cases

True, damage suits under Section 205(e) of the Act based on so-called retroactive pricing orders have been upheld, but they are readily distinguishable from the instant case. In each of them the fact was that the maximum price fixed by the retroactive order was not a new and different price, the order merely specifying the price that in legal contemplation existed from the beginning. It was the price that the seller either could have known or calculated from, or

have caused to be determined under, the applicable regulation *before* he ever made the sale; and he was bound, as a matter of law, to know or to ascertain such price *before* selling at all. In short, he was *in violation* at the very time he collected the sales price. *Porter v. Kramer*, 156 F.2d 687 (C.C.A. 8th, 1946); *Martini v. Porter*, 157 F.2d 35 (C.C.A. 9th, 1946), certiorari denied *sub nom. Martini v. Fleming*, 330 U.S. 848; *Porter v. Senderowitz*, 158 F.2d 435 (C.C.A. 3rd, 1946), certiorari denied *sub nom. Senderowitz v. Fleming*, 330 U.S. 848. Compare *Senderowitz v. Clark*, 162 F.2d 912 (E.C.A., 1947), voiding retroactive effect to the order sued upon in *Porter v. Senderowitz, supra.*

The clear distinction between those cases and the instant one is that in them the seller knew or could have known his correct maximum price before he sold, while here the landlord was collecting only what the regulation specifically authorized him to collect, and had no conceivable means of knowing whether his maximum rent would later be reduced at all, or, if reduced, what the new figure would be. In fact, the Administrator himself could not know that the legal first rent would not continue as the maximum rent until such time as he compared the first rent with the rents for comparable housing accommodations in the area.

The Effect on Enforcement

It is readily agreed that the decision in this case involves a question of great importance to the due administration and enforcement of the Emergency Price Control Act and the Housing and Rent Act of 1947. But petitioner has a blind spot that has prevented his seeing one of the most cogent reasons why that is true. In his zeal to recover treble damages for the United States Treasury, he has forfeited the rights of one of his most important *cestuis que trust*, namely, the tenant, for whose protection the refund provisions of the Rent Regulation were expressly designed. In suing on behalf of the United States, petitioner has ignored the fact that no part of any recovery of damages can be paid to the tenant.

From pages 6 to 8 of the Petition for Writ of Certiorari herein it appears that there are probably 650 cases like this

one pending throughout the country, and that the Housing Expediter will continue to bring like actions under the Housing and Rent Act of 1947.

Thus, in those 650 instances there has been, and in countless cases in the future (for the regulation issued under the Housing and Rent Act of 1947 says nothing of treble damages) there will be a complete disregard of the rights of the tenant. Lulled as he is by the rent regulations into the feeling that his refund rights will be protected, and unadvised as he is of petitioner's theory that he, the tenant, has a treble damage claim, he discovers those rights have been annihilated by petitioner's action in suing under Section 205(e) for the benefit of the United States Treasury, when an action by petitioner under Section 205(a) would accomplish the express purpose of Section 4(e) of the Rent Regulation by compelling return to such tenant of the amount he has overpaid.

It must be granted, of course, that in the public interest compliance with the statutes and rent regulations must be had, and that a landlord cannot be permitted with impunity to flaunt the requirement that he must register his first rent within 30 days. But it certainly does not follow that the sole means of coping with evaders is a suit to recover damages exclusively for the United States Treasury. Until recently, enforcement of the Emergency Price Control Act—except to the minds of those who have been penalized in treble damages—has never been thought to be a money raising enterprise for the Treasury.

To the contrary, an integral part of the price control plan has always been the protection of the consumer and tenant and the return to them of what was illegally taken. That protection, this Court has seemed to feel, is important. *Porter v. Warner Holding Co.*, 328 U. S. 395, 402. The remedy giving complete protection to a tenant's rights has always been ready at hand to the Housing Expediter. "Appropriate and necessary to enforce compliance with the Act," as this Court said, it is an order for restitution or refund under Section 205(a) of the Act. *Porter v. Warner Holding Co., supra*, 400. Plainly, no limitation runs against its enforcement, absent such long knowledge and inaction concern-

ing violations as to impute laches, but violations of Section 205(e) on the other hand, must go unpunished if not sued upon within one year from their occurrence, regardless of the time of discovery.

In *Porter v. Warner Holding Co., supra,* 328 U. S. 395, 402, it is said:

> "Restitution, which lies within that equitable jurisdiction, is consistent with and differs greatly from the damages and penalties which may be awarded under Section 205(e). *Bowles v. Skaggs, supra,* 821. When the Administrator seeks restitution under Section 205(a) he does not request the court to award statutory damages to the purchaser or tenant or to pay to such person part of the penalties which go to the United States Treasury in a suit by the Administrator under Section 205(e). Rather he asks the court to act in the public interest by restoring the status quo and ordering the return of that which rightfully belongs to the purchaser or tenant. Such action is within the recognized power and within the highest tradition of a court of equity. Thus it is plainly unaffected by the provisions of Section 205(e)."

Wrongdoer May Not Benefit From Own Wrong

What has been said above also disposes of petitioner's apprehension that a treble damage suit is the only means of preventing a landlord from gaining advantage from his own wrong.

The real duty of the Housing Expediter is to advise the tenant of his refund rights and enforce them for him, and not, as the Expediter mistakenly believes, to make punishment of the landlord the primary concern. If the wrongdoer is forced to give back that which he has obtained illicitly, the score is settled. That result can be obtained with precision by the action under Section 205(a) of the Act.

CONCLUSION

It is respectfully submitted that petitioner has mistaken his remedy in this case, and that the judgment of the Court of Appeals should be reversed, with instructions to order dismissal of the action.

Respectfully submitted.

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January, 1948

APPENDIX A.

Copy.

IN THE APPELLATE DEPARTMENT OF THE SUPERIOR COURT

County of Los Angeles, State of California

PHILIP E. FLEMING, Temporary Controls, *Plaintiff and Respondent* vs. O. L. BANKS, *Defendant and Appellant*	Superior Court No. Civ A 6536 Trial Court No. 771,-909

MEMORANDUM OPINION.

Appeal by defendant from a judgment made by the Municipal Court of the City of Los Angeles, C. Newell Carns, Judge. Reversed with directions to dismiss.

This action was brought by the Price Administrator, for whom the present plaintiff was later substituted, claiming to act under the authority of section 205(e) of the Emergency Price Control Act of 1942, as amended (sec. 925(e), Title 50, App. U.S.C.A.), to recover treble damages on account of an alleged overcharge of rent made by defendant, between October 1943 and September 1945, in a case where the tenant had failed to sue. Plaintiff's demand is based on the failure of defendant, who was the landlord of housing accommodations subject to the Rent Regulation for Housing and rented for the first time after such regulation became effective, to refund to his tenant the excess of the rent collected by him over the rent fixed by a retroactive order of the Area Rent Director made after the defendant had received the rent, and on the failure of defendant to file a registration statement as required by the regualtion. Plaintiff sued for and recovered treble the amount of this excess.

We held in *Lentz* v. *Ebright* (1947), L. A. Civ A 6404, that the Emergency Price Control Act does not authorize a treble damage action in such a case. Since that case was decided other cases involving the same question have been

argued and are before us for decision. We have therefore reviewed the grounds of our former decision and upon further consideration, we adhere to it, and state more fully our reasons for the conclusion.

The Rent Regulation above referred to was made by authority of the Emergency Price Control Act. Section 4 of this regulation provided for rent ceilings, which in case of the properties here involved were "the first rent for such accommodations . . . after the effective date" of regulation (sec. 4, subd.(e)). It also required the landlord, within thirty days after this first renting, to file a registration statement, and provided that if he did not do so "the rent received . . . shall be received subject to refund to the tenant of any amount in excess of the maximum rent which may later be fixed by an order" which, by the terms of other sections, may be made by the Area Rent Director. It further provided that "such amount shall be refunded to the tenant within 30 days after the date of issuance of the order." Some exceptions were made to "the duty to refund," but none of them is applicable here. Section 5(c)(1), under which the order relied upon by the plaintiff was made, plainly recognizes that the rent received was the maximum rent when received and until the order of reduction was made; only then did the maximum rent become less than the amount received. Applying these provisions to the facts of the present case, we find that when the rents collected by defendant were received by him they were the ceiling rents for the properties in question and that in receiving them the defendant was violating neither law nor regulation, but by reason of defendant's failure to file a registration statement, his right to retain the whole of the sums received was conditional; that is, if the Rent Director later made an order fixing the rent for the same period of time at a sum less then that received by defendant, the latter came under a "duty to refund" the excess to his tenant within thirty days. This the defendant did not do. The effect of his failure must be determined by the provisions of the Emergency Price Control Act.

Section 205(e) of that act (sec. 925, Title 50, App.U.S.C.A.) provided that for the purposes of that section "the payment or receipt of rent for defense-area housing accom-

modations shall be deemed the buying or selling of a commodity, as the case may be;" or, applying this definition directly to the present case, the receipt of rent by defendant is to be deemed the selling of a commodity. This section further provided that "If any person selling a commodity violates a regulation, order, or price schedule prescribing a maximum price or maximum prices, the person who buys such commodity . . . may, within one year from the date of the occurrence of the violation, . . . bring an action against the seller on account of the overcharge" and may recover as much as three times the overcharge, with attorney's fees, and also that if, in such case, the buyer fails to sue within 30 days after the violation, the Administrator may bring the action in behalf of the United States. In stating or quoting this section we omit various provisions not germane to the present question. In cases such as we have here, the right of the Administrator to sue under this section is plainly derivative and dependent upon the existence of a cause of action in the buyer which the latter has neglected to pursue.

What, then, was the right of the buyer (tenant) in this case? He could sue only if the "person selling a commodity violates a regulation, order, or price schedule prescribing a maximum price or maximum prices." By definition the "person selling" here is the defendant receiving rent. His conduct in so doing must be judged by the conditions existing when he received the rent. Unless at that time he violated some regulation, order or price schedule fixing prices, there was no "person selling" who did so. At the time defendant here received the rent in question it is clear that he did not violate any such regulation, order or price schedule. At that time there was no order, and the regulation authorized him to receive the amount he did receive. No price schedule is involved here.

It has been suggested that because the regulation provided that in such a case as this "the rent received . . . shall be received subject to refund" the rent can be regarded as constructively received when the order fixing the rent is made, and not sooner. But this theory is contrary to the very words of the regulation, which is not concerned with metaphysical abstractions but with actual facts, as plainly appears from the words just quoted. Nor do we see anything

in the statute to suggest that in speaking of "the payment or receipt of rent" it was concerned with anything but actual facts. Section 205(e) (Sec. 925(e), Title 50, App. U.S.C.A.), in dealing with the damages recoverable in the action there authorized, used several times the word "overcharge" and limited those damages to a maximum of three times the overcharge or $50.00, whichever is greater. It also defined the term "overcharge" as "the amount by which the consideration exceeds the applicable maximum price." These are words of the present, not the future, and indicate that a determination of the excess is to be made as of the date the transaction takes place, rather than some future time. If at that date there is no applicable maximum price, or there is one but it is not exceeded, there is no overcharge, in the view of the statute.

It is to be noted also that it is the violation of "a regulation, order or price schedule prescribing a maximum price or maximum prices" which generates a cause of action for treble damages, not merely a violation of any regulation or order. There was here a regulation prescribing maximum prices (rents), but it was not violated. There was also an order retroactively reducing the rents fixed by the regulation, but it was not violated in the receipt of rent because then non-existent. What was violated was a regulation requiring a refund of part of rents which were in violation of nothing when received but became excessive thereafter because of the retroactive order. This is not a regulation prescribing maximum prices (rents). By section 2 of the Emergency Price Control Act (Sec. 902, Title 50, App. U.S.C.A.), the Administrator may by regulation or order establish maximum prices (subd.(a)) and maximum rents for housing accommodations (subd. (b)), and may also place in his regulation and orders "such provisions as the Administrator deems necessary to prevent the circumvention or evasion thereof." (Subd. (g).) The provisions of the regulation for refunds of rents declared excessive were of the last mentioned class, that is, they were ancillary to the price (rent) fixing regulations and orders, and might assist in preventing circumvention or evasion thereof, but they were not of themselves price fixing regulations. Congress saw fit to limit its provisions for treble damages to violation of

orders and regulations which were price fixing; it did not extend them to other orders and regulations which the Administrator might be authorized to make. We see no reason for extending them to such other orders by interpretation. A violation of such provisions may nevertheless not be without consequences to the violator, for it seems it would be subject to the provisions of sections 4(a) and 205(b) of the Act (Secs. 904(a) and 925(b), Title 50, App. U. S. C. A.), which together made it a crime to violate any regulation or order made under section 2 (Sec. 902, Title 50, App. U.S. C.A.).

To construe the statute as imposing on a landlord a treble damage penalty for receiving rent which was lawful when received would give it an effect similar to that of an ex post facto law, which is prohibited to Congress by the United States Constitution (Sec. 9, Art. I). An ex post facto law is but a particular instance of retrospective legislation, using that term in its most general sense (16 C.J.S. 856; *Shwab v. Doyle* (1922), 258 U.S. 529, 534; 66 L. ed. 747, 752). Even in cases where a retrospective law is not prohibited, such effect is not favored but will be given to a law only where it is plainly expressed. (12 Cor. Jur. 1091; *Shwab* v. *Doyle*, supra; *Miller* v. *U. S.* (1935), 294 U.S. 435, 439; 79 L. ed. 977, 981; *Claridge Apts. Co.* v. *Com'r of Int. Rev.* (1934), 323 U.S. 141, 164, 89 L. ed. 139, 153.) It may be that technically this act would not be a retrospective or ex post facto law, even if given the construction just mentioned; but the reason on which the condemnation of those laws is based, that they make unlawful, or even penalize, acts which were lawful when done, would be equally applicable here, and the rule against retroactive construction should be likewise applied here.

We are aware that some decisions of Federal District Courts may be cited as in opposition to our conclusion, for they award treble damages in cases like that now before us. But it does not appear that the questions we have considered were presented to those courts, and they were not discussed in the opinions. The matter under consideration in all of them was the time when the statutory period for beginning the action began to run. The several courts assumed, with little or no discussion, that the administrator or the tenant, as the case might be, had a cause of action for treble damages.

by reason of failure of the landlord to refund to the tenant the excess of rent received over that fixed by a retroactive order, and went on from there to hold that the statutory time began to run at the expiration of the time which the regulation or order allowed the landlord in which to make the refund. If we accepted this assumption, we would not find great difficulty in agreeing to the conclusion as to time; but we cannot regard these apparently unreasoned conclusions of trial courts as establishing a rule on a Federal question which we must follow notwithstanding our definite opinion to the contrary. The cases referred to are: *Haber* v. *Garthly* (1946), 67 F. Supp. 774, 776; *Parham* v. *Clark* (1946), 68 F. Supp. 17; *Porter* v. *Butts* (1946), 68 F. Supp. 516, 518; *Porter* v. *Sandberg* (1946), 69 F. Supp. 29, 31; *Porter* v. *Stricklin* (1947) 71 F. Supp. 5, 7. *Bowles* v. *Babcock* (1946), 65 F. Supp. 380, while of doubtful import in regard to the time limit, agrees with the other cases just cited in making the assumption above mentioned.

Other questions have been presented and argued but in view of our conclusions already stated we deem it unnecessary to discuss them.

The judgment is reversed, with directions to dismiss the action, without costs of appeal to either party.

Dated October 3, 1947.

SHAW

Presiding Judge

SUPREME COURT OF THE UNITED STATES

No. 392.—October Term, 1947.

Tighe E. Woods, Housing Expediter, Office of Housing Expediter, Petitioner, *v.* Charles Stone.	On Writ of Certiorari to the United States Circuit Court of Appeals for the Sixth Circuit.

[March 15, 1948.]

Mr. Justice Jackson delivered the opinion of the Court.

Respondent Stone owned a house in Mooresville, Indiana which he rented to one Locke for $75 per month beginning on or about August 1, 1944. As this was the first rental of the premises, the applicable law [1] and regulations [2] imposed on the owner a duty to file a registration statement within thirty days.

The respondent failed to register the property. He sold it in April 1945 and registration by the new owner

[1] Emergency Price Control Act of 1942, 56 Stat. 23, as amended by Stabilization Extension Act of 1944, 58 Stat. 632, 50 U. S. C. App., Supp. V, § 901 *et seq.*

[2] Section 7, Rent Regulations for Housing, 8 Fed. Reg. 14663, 10 Fed. Reg. 3436, providing in part as follows: *Registration*—(a) *Registration statement.*—On or before the date specified in Schedule A of this regulation, or within 30 days after the property is first rented, whichever date is the later, every landlord of housing accommodations rented or offered for rent shall file in triplicate a written statement on the form provided therefor to be known as a registration statement. The statement shall identify each dwelling unit and specify the maximum rent provided by this regulation for such dwelling unit and shall contain such other information as the Administrator shall require. The original shall remain on file with the Administrator and he shall cause one copy to be delivered to the tenant and one copy, stamped to indicate that it is a correct copy of the original, to be returned to the landlord . . . .

brought notice to the Area Rent Director of respondent's prior renting of the property without complying with the registration requirement. On June 28, 1945, the Director, pursuant to the regulations, reduced the rental from $75 to $45 per month, effective from the first rental, and ordered the excess refunded within thirty days thereafter. Respondent failed to refund, the tenant did not sue and this action was instituted by the Price Administrator. The District Court and the Court of Appeals, among other things, held that the one-year statute of limitations ran from the dates of payment of the rentals. 163 F. 2d 393. This conflicted with the holding of the Court of Appeals for the Fourth Circuit which, under similar circumstances, held that the limitation period started upon default in refunding the excess within thirty days after the refund order. *Creedon* v. *Babcock*, 163 F. 2d 480. We granted certiorari limited to this question. 332 U. S. 835.

No question is raised, and none could have been raised in this proceeding, as to the validity of the relevant regulations and the refund order, either on the ground of retroactivity or otherwise, because any challenge to the validity of either would have to go to the Emergency Court of Appeals. 50 U. S. C. App., Supp. V, § 924; *Bowles* v. *Willingham*, 321 U. S. 503. See also *Woods* v. *The Cloyd W. Miller Company*, 333 U. S. 138. Taking the legislation, the regulations and the order to be valid exercises of governmental power, as we are thus required to do, the only question before us is when do excessive collections by the landlord begin to enjoy the shelter of the statute of limitations?

Under the system of rent control as established, a landlord is required to register rented accommodations within thirty days after they are first devoted to that use. This brings notice to the control authority that the premises are within its official responsibility and provides data for

quick, if tentative, determination as to whether the rental exacted exceeds the level permitted by the policy of Congress set out in the statute.

But when, as in this case, the landlord does not comply with this requirement, there is likelihood that, as happened here, his transaction will be overlooked for some time or perhaps escape scrutiny entirely. But the landlord is not allowed thus to profit from his own disobedience of the law. If he could keep the excess collections by thus retarding or preventing scrutiny of his contract, he would gain an advantage over all landlords who complied with the Act as well as over tenants whose necessity for shelter is too pressing to admit of bargaining over price. The plan therefore provides that, despite his failure to register, the landlord may continue to collect his unapproved price, but only on condition that it is subject to revision by the public authority and to a refund of anything then found to have been excessive.[3]

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[3] Section 4, Rent Regulations for Housing, 8 Fed. Reg. 14663, 10 Fed. Reg. 3436, providing in part as follows: *Maximum rents*—(e) *First rent after effective date.*—For (1) newly constructed housing accommodations without priority rating first rented on or after the effective date of regulation, or (2) housing accommodations changed on or after such effective date so as to result in an increase or decrease of the number of dwelling units in such housing accommodations, or (3) housing accommodations not rented at any time during the two months ending on the maximum rent date nor between that date and the effective date, the first rent for such accommodations after the change or effective date, as the case may be, but in no event more than the maximum rent provided for such accommodations by any order of the Administrator issued prior to September 22, 1942. Within 30 days after so renting the landlord shall register the accommodations as provided in § 7. The Administrator may order a decrease in the maximum rent as provided in § 5 (c).

If the landlord fails to file a proper registration statement within the time specified (except where a registration statement was filed prior to October 1, 1943), the rent received for any rental period commencing on or after the date of the first renting or October 1,

The plan of the statute and the regulations issued pursuant to it was applied in this case. The landlord failed to register the property. His rental operations escaped notice of the authorities until fortuitously disclosed. He collected as he had a right to do, but subject to readjustment, a rental fixed by himself that was found on inquiry to exceed by 66-2/3% what was fair rental value of the property. He was ordered to refund the excess. He now contends that he can keep all of it that he collected upwards of a year before the action was commenced, upon the ground that the one-year statute of limitations runs,[4] not from the date of his default in obeying the refund order, but from the date of each collection of rental.

We cannot sustain his contention. The statute and regulations made his rentals tentative but not unlawful.

1943, whichever is the later, shall be received subject to refund to the tenant of any amount in excess of the maximum rent which may later be fixed by an order under § 5 (c) (1). Such amount shall be refunded to the tenant within 30 days after the date of issuance of the order . . . .

[4] Section 205 (e) of the Act as amended, 50 U. S. C. App., Supp. V, § 925 (e) provides: If any person selling a commodity violates a regulation, order, or price schedule prescribing a maximum price or maximum prices, the person who buys such commodity for use or consumption other than in the course of trade or business may, within one year from the date of the occurrence of the violation, except as hereinafter provided, bring an action against the seller on account of the overcharge . . . . For the purposes of this section the payment or receipt of rent for defense area housing accommodations shall be deemed the buying or selling of a commodity, as the case may be . . . . If any person selling a commodity violates a regulation, order, or price schedule prescribing a maximum price or maximum prices, and the buyer either fails to institute an action under this subsection within thirty days from the date of the occurrence of the violation or is not entitled for any reason to bring the action, the Administrator may institute such action on behalf of the United States within such one-year period . . . .

The functions of the Administrator were subsequently transferred to the Housing Expediter who appears as petitioner here.

Until the contingency of readjustment occurred, the tenant could have had no cause of action for recovery of any part of the rental exacted by the landlord. The cause of action now does not rest upon, and hence cannot date from, mere collection. The duty to refund was created and measured by the refund order and was not breached until that order was disobeyed. It would be unusual, to say the least, if a statutory scheme were to be construed to include a period during which an action could not be commenced as a part of the time within which it would become barred. *United States* v. *Wurts*, 303 U. S. 414. We think no such result was expressed or intended. It was from the violation which occurred when the order was not obeyed within the required time that the statute of limitations commenced to run. *Cf. Rawlings* v. *Ray*, 312 U. S. 96; *Fisher* v. *Whiton*, 317 U. S. 217; *Cope* v. *Anderson*, 331 U. S. 461.

It is now suggested that no cause of action can be based on a refund order, irrespective of its validity. As we have pointed out, the validity of the regulation and order are conclusive upon us here. This cause of action is based upon violation of an "order . . . prescribing a maximum [rent] . . . ." The command to refund cannot be treated as a thing apart, but must be taken in its setting as an integral and necessary part of the order fixing the maximum rent. It was this order that was disobeyed. It would be a strange situation if there were authority to order the landlord to make a refund but no legal obligation on his part to pay it. We think it clear that default in obedience to the requirement of refund gives rise to the cause of action sued upon herein.

It is also suggested that the refund order applies the law to the landlord retroactively. Quite apart from the fact that this is an objection to the order itself rather than to the question of limitation of time, we think the suggestion to be without merit. This is not the case of a

new law reaching backwards to make payments illegal that were free of infirmity when made. By legislation and regulation in force before the collections were made, the landlord's own default in registering had rendered these payments conditional, subject to revision and to refund. Readjustment under these conditions cannot be said to be retroactive law making.

We hold that the one-year statute of limitations began to run on the date that a duty to refund was breached, and on this point only we reverse the judgment of the court below.

Reversed.

SUPREME COURT OF THE UNITED STATES

No. 392.—October Term, 1947.

Tighe E. Woods, Housing Expediter, Office of Housing Expediter, Petitioner, *v.* Charles Stone.	On Writ of Certiorari to the United States Circuit Court of Appeals for the Sixth Circuit.

[March 15, 1948.]

Mr. Justice Frankfurter, concurring.

I had supposed that no rule of judicial administration was better settled than that the Court should restrict itself to the questions presented in a petition for certiorari. This is especially true where, as here, the petition was granted but "limited to the question as to the statute of limitations presented by the petition for the writ, and the case is transferred to the summary docket." 332 U. S. 835. The exceptions to this rule are rare, as where the jurisdiction of this Court or of the lower courts is plainly wanting, or where a patent error *in favorem vitae* is to be noted. In any event, it is clear that this case could not be one of them. The exclusive jurisdiction provisions of the Emergency Price Control Act may well preclude our consideration of the validity of the "retroactive order." But since an issue other than that pertaining to the statute of limitations has been dealt with, I would like to add a few words to Mr. Justice Jackson's opinion, inasmuch as his immoderate restraint does not lay bare the "merits" of the controversy.

The crux of the matter is that where a landlord rents new housing accommodations but, as here, disobeys the regulatory scheme and fails to file a registration statement, if he chooses to collect the rent that he himself has

fixed, he can do so only contingently. The Administrator may catch up with him and fix what was the proper amount from the beginning. The excess is illegal and must therefore be refunded.

There is nothing novel about a regulatory scheme whereby landlords who violate the law are denied the right to profit thereby. It has consistently been upheld by the Emergency Court of Appeals. *150 East 47th Street Corp.* v. *Creedon*, 162 F. 2d 206; see *Senderowitz* v. *Clark*, 162 F. 2d 912, 917; cf. *Easley* v. *Fleming*, 159 F. 2d 422. When Congress provided in § 2 (g) of the Act that regulations "may contain such provisions as the Administrator deems necessary to prevent the circumvention or evasion thereof," 56 Stat. 23, 27, 50 U. S. C. Supp. V, § 902 (g), it plainly authorized effective administrative remedies for dealing with evasion.

If such an order is to be termed "retroactive," it comes within the Court's recent ruling that "such retroactivity must be balanced against the mischief of producing a result which is contrary to a statutory design or to legal or equitable principles. If that mischief is greater than the ill effect of the retroactive application of a new standard, it is not the type of retroactivity which is condemned by law." *Securities & Exchange Commission* v. *Chenery Corp.*, 332 U. S. 194, 203.

SUPREME COURT OF THE UNITED STATES

No. 392.—October Term, 1947.

Tighe E. Woods, Housing Expediter, Office of Housing Expediter, Petitioner, *v.* Charles Stone.	On Writ of Certiorari to the United States Circuit Court of Appeals for the Sixth Circuit.

[March 15, 1948.]

Mr. Justice Douglas, dissenting.

I think it is plain that a "refund order" is not a maximum rent order since it does more than fix a rent ceiling. I would not stretch a point to call it such, in view of the aversion our law has to the creation of retroactive liabilities. The Court finds fairness in the result because of the special circumstances of the case. Yet it recognizes a cause of action created not by Congress but by those who administer the law. That cause of action is written into the statute through the addition of retroactive liabilities.

The rent collected by this landlord was the maximum rent which he could at the time lawfully collect. At no time did he collect rent in excess of the ceiling then prevailing.[1] Almost a year later the ceiling was reduced—from $75 a month to $45 a month—and the reduction was made retroactive by a "refund order." The landlord is now sued by the government for treble the amount of the so-called overcharge.

The statute gives a right of action against anyone who collects more than the prescribed maximum price or rent.

[1] The maximum rent for the type of housing involved here was the first rent after the effective date of the regulations, *viz.*, $75 a month. See Rent Regulation for Housing, § 4 (c) (3), 8 F. R. 14663, 10 F. R. 3436.

§ 205 (e).[2] No right of action to sue for overcharges prescribed by a "refund order" is contained in § 205 (e) which defines the cause of action and the statute of limitations with which we are presently concerned.[3] The cause of action there described is based on a violation of a maximum rent order. The statute of limitations runs "from the date of the occurrence of the violation." It will not do to say that the date of the violation in this situation must relate to the "refund order" because prior thereto there was no violation. Such an interpretation rewrites § 205 (e) and creates a cause of action not only for violating a rent ceiling but also for violating a "refund order." That changes the scheme of the section. The right to obtain a return of money paid normally turns on conditions existing when it was paid. The statute of limitations usually starts to run then and not at some later time. Certainly it is novel law which makes the legality of rent payments turn on the unpre-

[2] Section 205 (e) provides, so far as here material, as follows: "If any person selling a commodity violates a regulation, order, or price schedule *prescribing a maximum price* . . . the person who buys such commodity . . . may, within one year from the date of the occurrence of the violation, . . . bring an action against the seller on account of the overcharge . . . . For the purposes of this section the payment or receipt of rent . . . shall be deemed the buying or selling of a commodity, as the case may be; and the word 'overcharge' shall mean the amount by which the consideration *exceeds the applicable maximum price.*" (Italics added.)

[3] It may be that the Administrator could sue to compel compliance with the refund order under § 205 (a). See *Porter* v. *Warner Co.*, 328 U. S. 395. There may be other remedies arising from respondent's failure to file a registration statement. Thus § 4 (e) of the Rent Regulations for Housing states: "The foregoing provisions and any refund thereunder do not affect any civil or criminal liability provided by the Act for failure to file the registration statement required by section 7." There is no need to canvass those possibilities here as § 205 (e) supplies the only basis for petitioner's judgment in this case.

dictable future action of an official who in the exercise of his discretion determines that a lower rental should have been paid. Yet the Court has to enter that field of retroactive law in order to make a "refund order" a maximum rent order for the purposes of § 205 (e).

Congress here said in effect that all payments for housing and commodities in excess of the prevailing ceiling were unlawful; and all payments at the ceiling were lawful. The Court in its construction of § 205 (e) does violence to that policy. For it expands the statutory cause of action so as to penalize those who in yesterday's transactions exacted no more than the law and regulations permitted. Any such use of retroactive law to construe § 205 (e) makes it most doubtful that Congress ever adopted the meaning now given the section. I would conclude that Congress had taken that course only if it had said so in unambiguous terms. But one who reads § 205 (e) to find any reference to liabilities based on "refund orders" reads in vain. And it is only violations of the orders described in that section which give rise to the cause of action under it.

It is said, however, that no question concerning the validity of the "refund order" can be considered here because any challenge to its validity would have to go to the Emergency Court of Appeals. I do not dispute that view. See *Bowles* v. *Willingham*, 321 U. S. 503; *Yakus* v. *United States*, 321 U. S. 414. For Congress in § 203 and § 204 of the Act provided a special administrative procedure for testing the validity of any provision of a "regulation, order, or price schedule," a procedure the constitutionality of which we have sustained. See *Lockerty* v. *Phillips*, 319 U. S. 182; *Yakus* v. *United States*, *supra*. But we are not here concerned with the power of the Administrator to issue a "refund order." Our question is different and involves only a question of law turning on the meaning of § 205 (e). What we have to decide is whether

a "refund order" is a "regulation, order, or price schedule prescribing a maximum price" within the meaning of § 205 (e). That is the first step in determining the time from which the statutory period of limitations is measured.

In short, the cause of action here at issue can be created only by the statute, not by regulations. The question is not one of validity of the regulations but of statutory interpretation; not an interpretation to determine whether the statute authorizes the regulations, but whether it authorizes the suit.